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Brooklyn boy knew nothing about. One friend jokes that she taught Epstein the difference between a fish fork and a salad fork. But despite—or was it because of?—Maxwell's devotion to Epstein, she, too, graduated from girlfriend to friend status. According to *Jane Doe 102 vs. Jeffrey Epstein*, a civil complaint filed in 2009 by a woman later identified as Virginia Roberts, one of the services Maxwell provided for Epstein was the procurement of underage women. (Through her lawyer and in court papers, Maxwell has vehemently denied any involvement with Virginia, with any other young woman Epstein was involved with, or with any criminal activities committed by Jeffrey Epstein. In a 2016 answer to a defamation lawsuit brought by Roberts, Maxwell called the allegations fabricated for financial gain.)

The case of Nadia Bjorlin, who was thirteen when she was first noticed by Epstein, raises questions in this regard, at least in the eyes of her mother.

Bjorlin's Iranian-born mother spoke to a British tabloid some years ago about her family's disturbing experience with Maxwell and Epstein. Bjorlin's father, a celebrated conductor of classical music, had died a year earlier, the mother said. She believed that this made the girl a vulnerable and easy target.

“She was at school at the famed Interlochen Arts Center, in Michigan, when she met Epstein,” the mother said.

“My daughter was a singer. She was a baby. She was a skinny little girl, not mature for her age. She was thirteen, but everyone thought she was nine or ten.

“Epstein was a big donor, and he heard about Nadia and that her father had died, so she was vulnerable, and he contacted her. He said, ‘Here's my number.’

“He kept saying, ‘Come—will you come?’ He said he wanted to help mentor her. I wouldn't let her meet him. What sort of a man approaches a young girl and asks to meet her?"

In the meantime, Maxwell had become friendly with the family. "I trusted Ghislaine; she was like a mother," Bjorlin's mother recalled. "She was always calling my house.

"Ghislaine didn't want me to meet Epstein, but I did anyway, and I asked what he wanted with Nadia. He said he wanted to help her singing career. He said, 'I'd like to be like a godfather.' It felt creepy.

"I had a bad vibe about him and said, 'Stop!' I told him, 'No, thank you. She doesn't need your help.' I kept Nadia away from him. She never met him alone. She never went anywhere with him."

Despite her suspicions, it took Epstein's arrest to make Bjorlin's mother wonder whether Maxwell and Epstein hadn't been sizing her daughter up for his stable of underage women.

Leslie Wexner: 19

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CHAPTER 30

Leslie Wexner: 1993

Leslie Wexner, the richest man in Ohio, is a proud midwesterner. Born into the rag trade (Wexner’s parents were Russian-Jewish immigrants), he grew up to be a straight shooter—taciturn and camera-shy.

For several years running, his 315-foot boat, the *Limitless,* was the largest yacht owned by an American.

Wexner’s employees loved him, and he was known to be fiercely loyal to them.

In time, he’d come to see the same qualities in Jeffrey Epstein.

“Everyone was mystified as to what [Epstein’s] appeal was,” says Robert Morosky, a former vice chairman of the clothing retailer the Limited, founded by Wexner.

“Almost everyone at the Limited wondered who he was,” another former employee of Wexner’s recalls. “He literally came out of nowhere.”

But it seems that Epstein did work hard to untangle Wexner's finances. And it appears he succeeded. "Jeffrey cleaned that up right away," a former associate of Epstein's says.

The two men became all but inseparable.

"Very smart, with a combination of excellent judgment and unusually high standards," Wexner said of Epstein at the time. "Also, he is always a most loyal friend."

When Wexner wanted to break up with a woman he'd been dating for several years—a woman who moved to Ohio and converted to Judaism to make him happy—he dispatched Epstein to do the dirty work.

When Wexner hired a decorator for his Ohio mansion and wanted someone to verify the authenticity of several expensive antiques, Epstein flew in his friend Stuart Pivar, the renowned art collector and author. (According to Pivar, most of the antiques were cheap imitations.) When Wexner traveled abroad, he'd bring back trinkets and gifts for Epstein. When Wexner wanted to see *Cats*, Epstein arranged to have the cast perform in his mansion.

In Ohio, Wexner's associates whispered about his relationship with Jeffrey Epstein. In New York, they wondered about Epstein's role in Wexner's 1993 marriage to Abigail Koppel.

At thirty-one, Koppel was twenty-four years Wexner's junior. It was Epstein who negotiated the prenuptial agreement and orchestrated its very strange signing. Abigail signed the agreement in her law office. Wexner signed it in his office. According to an associate of Epstein's who was present, Epstein brought a *Sports Illustrated* swimsuit model along to Wexner's office, as if

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to make the point that there are other beautiful women in the world. As a joke, Epstein placed the agreement on the model's belly and had Wexner sign it right there.

Epstein asked his friend: "Are you sure you want to do this?"

"Yes, Jeffrey," said Wexner. "Quite sure."

"It was an uproarious scene," Epstein's associate recalls. "Just Jeffrey being Jeffrey. That was his gestalt."

PART III

The Women

CHAPTER 31

Mc2 Model Management's NYC branch is looking for "highly motivated and energetic" interns to assist their agents part-time or full-time. If you're thinking to yourself, who?, it's the agency founded by Jean-Luc Brunel, the guy who first signed Christy Turlington when she was just fourteen. Responsibilities include scanning pictures, answering phones, assisting with updating models' portfolios, and working in Photoshop, Word and Excel (so you have to already know what you're doing in those). You Must: Be interested in the fashion, modeling and photography industries, outgoing, well spoken, and able to keep cool while five different people demand Starbucks / copies / phone calls / etc. This is a great opportunity to get hands-on experience at a smaller agency, plus they can offer a stipend and a Metrocard as well as school credit if needed. Send your resume to intern@mc2mm.com Good luck!

—Julia Hermanns, *Fashionista,* January 30, 2009

Jean-Luc Brunel: 2005

For Jeffrey Epstein, Leslie Wexner is more than a mentor. More than the last in a line of older men—father figures—whom Epstein cultivated while making his way in the world.

Wexner is also a steady, if indirect, source of beautiful women.

After all, Wexner is the man in charge of Victoria's Secret, part of the Limited family of companies and—better yet—in charge of the Victoria's Secret catalog. What this means for Epstein is models galore. In fact, like a fox that's gotten hold of the lease to a henhouse, Epstein, according to evidence collected in a later lawsuit brought by Epstein victims, eventually provided financial support for a modeling agency, and provided support for models employed by that agency, in New York City.

This story begins with a Frenchman—a playboy modeling agent named Jean-Luc Brunel—who was an owner of the Karin modeling agency.

Brunel had been working as a modeling agent since the seventies. He claimed to have launched the careers of Monica Bellucci, Estelle, Jerry Hall, Rachel Hunter, Milla Jovovich, Rebecca Romijn, Kristina Semenovskaya, Sharon Stone, and Estella Warren, as well as Christy Turlington and other well-known cover girls. Brunel had also been a subject of a *60 Minutes* investigation, broadcast in 1988, into sexual exploitation in the modeling industry. That exposé had caused Eileen Ford of the elite Ford modeling agency to sever her ties with the playboy. (Brunel's activities were also chronicled in a 1995 book about the fashion

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industry—*Model: The Ugly Business of Beautiful Women,* by Michael Gross.)

But Brunel's reputation did not prevent Jeffrey Epstein from getting involved in his business.

According to a summary judgment court filing by Bradley Edwards, a victims' lawyer defending against a lawsuit by Jeffrey Epstein alleging fabrication of sexual assault cases against him, Epstein had provided support for Brunel's agency, which changed its name, in 2005, from Karin to MC2—as in $E = mc^2$.

As a scout for MC2, Brunel traveled the world in search of undiscovered talent, favoring Scandinavia, Israel, central Europe, the former Soviet republics, and South America, setting up modeling competitions and negotiating with other international modeling agents and agencies.

But according to the court filing, in which Edwards detailed the information he had gathered in support of victims, Epstein and Brunel had used the agency to bring underage girls from foreign countries into the United States by promising them modeling contracts. These girls were then housed in condominiums belonging to Epstein. "Epstein and Brunel would then obtain a visa for these girls," the document states, "then charge the underage girls rent, presumably to live as underage prostitutes in the condos."

"I strongly deny having participated, neither directly nor indirectly, in the actions Mr. Jeffrey Epstein is being accused of," Brunel would say. "I strongly deny having committed any illicit act or any wrongdoing in the course of my work as a scouter or model agencies manager. I have exercised with the utmost ethical standard for almost forty years."

According to Brunel, his association with Jeffrey Epstein ended up having a strong negative impact on his reputation and business. Several photographers refused to work with him. Other agencies, such as Modilinos Model Management, curtailed their relationships with Brunel. And in 2015, Brunel filed his own civil lawsuit against Jeffrey Epstein, denying that he had any role in Epstein's illegal activities, alleging that Epstein had obstructed justice by telling him to avoid having his deposition taken in the criminal case the Palm Beach PD had built against Epstein, and claiming that false allegations of Brunel's links to Epstein's activities had harmed his reputation and cost him a great deal of business.

In his filing, Brunel included several e-mails from industry contacts who expressed their doubts about placing models with his agency. "Parents don't want their daughters coming to us because [when] they google your name and the agency name the only things they see is 'Sex Trafficking'!!!" one correspondent had written.

Nadia Marcinkova: circ

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CHAPTER 32

Nadia Marcinkova: circa 2000

MC2 has offices in New York City. But Jeffrey's always *in motion*—flying to his homes in New Mexico and the Virgin Islands. Often to Palm Beach. Sometimes to Paris. And when he comes home to New York he hosts parties where important people—corporate titans, real estate tycoons, university presidents, Nobel Prize–winning scientists, princes, ex-presidents, and heads of state—mingle with beautiful women.

Some guests marvel in public: Who *are* these women? Where do they *come* from?

Nadia Marcinkova comes from Slovakia. She looks like a model. But Nadia's done very little modeling, if any. Instead she's become another of Epstein's girlfriends.

According to statements given to the Palm Beach police, she's also served as a willing accomplice in Epstein's sexual assaults on underage females.

Epstein prefers diminutive women, but Nadia is tall. She's rail-thin and blond like the sun, with glowing skin, a wide smile, and sky-high cheekbones.

On a good day, she could pass for a Bond girl—a woman caught up in a web of crime and intrigue. But of course, that's exactly what she is.

In certain circles, the academics and the women in Epstein's orbit are almost a joke. In a 2003 profile of him, *New York* magazine quotes Harvard professors ("He is amazing"), Princeton professors ("He changed my life"), MIT professors ("If I had acted upon the investment advice he has given me over the years, I'd be calling you from my Gulfstream right now"), and other luminaries, up to and including Bill Clinton.

"I've known Jeff for fifteen years," says Donald Trump. "Terrific guy; he's a lot of fun to be with."

No one knew then that someday Trump would run for president. (When he does, he'll attack Hillary Clinton for Bill Clinton's own entanglements with Epstein.) But Trump's already ahead of the curve in that he ends up severing his ties to Epstein well before the police or the media get wind of Epstein's penchant for underage girls.

He does this because he finds out that in their endless hunt for "masseuses," Epstein's procurers have been prowling around Trump's estate in Palm Beach.

Virginia Roberts: 1999

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CHAPTER 33

Virginia Roberts: 1999

Trump's estate, Mar-a-Lago, had once belonged to the fabulously wealthy heiress Marjorie Merriweather Post. It sits on twenty perfectly manicured acres less than two miles away from Jeffrey Epstein's home on El Brillo Way. It's home to the exclusive Mar-a-Lago Club, which has a spa, tennis courts, and a very posh restaurant.

Donald Trump had fought the town council for decades as they blocked all his efforts to turn the place into a private resort. Other clubs on the island—those with a history of excluding blacks and Jews—had never faced such restrictions, Trump had argued. At one point he sent copies of two movies to every member of the town council: *Guess Who's Coming to Dinner,* in which Sidney Poitier confronts his girlfriend's racist parents, and *Gentleman's Agreement,* in which a journalist confronts anti-Semitism in Connecticut and New York City.

"Whether they love me or not, everyone agrees the greatest and most important place in Palm Beach is Mar-a-Lago," Trump told the *Washington Post* after winning his battle. "I took this ultimate place and made it incredible and opened it, essentially, to the people of Palm Beach. The fact that I owned it made it a lot easier to get along with the Palm Beach establishment."

The Breakers hotel, Trump explained, "gets the [island's] leftovers."

It cost $100,000 to join the club. Members paid $14,000 yearly in dues. And although Epstein had never properly joined the club, Trump's friendship with Ghislaine Maxwell gave Epstein unlimited use of the facilities.

This arrangement ended when a member's young daughter complained to her wealthy father: while relaxing at Mar-a-Lago, she'd been approached and invited out to Epstein's house.

The girl said that she had gone and that Epstein had tried to get her to undress.

The girl's father had gone directly to Trump, who—in no uncertain terms—told Epstein that he was barred from Mar-a-Lago.

Because no complaint was filed, the police had taken no action. But years later, a woman named Virginia Roberts would say that, as a young girl, she'd had an identical encounter at Mar-a-Lago.

According to a court document Virginia filed in her civil lawsuit against Epstein, she was a changing-room assistant at Mar-a-Lago, earning about nine dollars an hour, when Ghislaine Maxwell approached her. Maxwell asked Virginia if she was interested in learning to be a massage therapist—which, it turned out, she was. Like the other girl, Virginia told her father,

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who was also employed at Mar-a-Lago as a maintenance manager. But Virginia's father saw nothing wrong with the offer, and he drove her, later that day, to Epstein's house on El Brillo Way.

There, according to the document, Maxwell assured Virginia's father that Ms. Maxwell would provide transportation home for his teenage daughter. Then she led Virginia upstairs, to a spa room equipped with a shower and a massage table. Jeffrey Epstein was lying, naked, on the table.

Virginia was shocked, she says in the filing, but, with no experience with massages, thought this could be massage therapy protocol. "Ms. Maxwell then took off her own shirt and left on her underwear and started rubbing her breasts across [Jeffrey's] body, impliedly showing [Virginia] what she was expected to do," the filing continues. "Ms. Maxwell then told [Virginia] to take off her clothes. The minor girl was apprehensive about doing this, but, in fear, proceeded to follow Ms. Maxwell by removing everything but her underwear. She was then ordered to remove her underwear and straddle [Epstein]. The encounter escalated, with [Jeffrey] and Ms. Maxwell sexually assaulting, battering, exploiting, and abusing [Virginia] in various ways and in various locations, including the steam room and the shower. At the end of this sexually exploitive abuse, [Epstein] and Ms. Maxwell giddily told [Virginia] to return the following day and told her she had 'lots of potential.' [Epstein] paid [Virginia] hundreds of dollars, told her it was for two hours of work, and directed one of her employees to drive her home."

At the time, Virginia was fifteen years old.

CHAPTER 34

Declaration of Virginia Roberts Giuffre: January 19, 2015, filed on January 19, 2015 by attorneys representing Jeffrey Epstein's victims

1. My name is Virginia Giuffre and I was born in August, 1983.

2. I am currently 31 years old.

3. I grew up in Palm Beach, Florida. When I was little, I loved animals and wanted to be a veterinarian. But my life took a very different turn when adults—including Jeffrey Epstein and his close friend Alan Dershowitz—began to be interested in having sex with me.

4. In approximately 1999, when I was 15 years old, I met Ghislaine Maxwell. She is the daughter of Robert Maxwell, who had been a wealthy publisher in Britain. Maxwell asked that I come with her to Jeffrey Epstein's mansion for the purposes of teaching me how to perform "massages" and to train

me personally in that area.
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9. You can see how you
below [see insert page 3].
10. Epstein took me on a
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CHAPTER 34

erts Giuffre: January 19,
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me personally in that area. Soon after that I went to Epstein's home in Palm Beach on El Brillo Way.

5. From the first time I was taken to Epstein's mansion that day, his motivations and actions were sexual, as were Maxwell's. My father was not allowed inside. I was brought up some stairs. There was a naked guy, Epstein, on the table in the room. Epstein and Maxwell forced me into sexual activity with Epstein. I was 15 years old at the time. He seemed to be in his 40s or 50s. I was paid $200. I was driven home by one of Epstein's employees.

6. I came back for several days following and did the same sorts of sexual things for Epstein.

7. After I did those things for Epstein, he and Maxwell said they were going to have me travel and were going to get an education for me. They were promising me the world, that I would travel with Epstein on his private jet and have a well-paid profession. Epstein said he would eventually match me up with a wealthy person so that I would be "set up" for life.

8. So I started "working" exclusively for Epstein. He took me to New York on his big, private jet. We went to his mansion in New York City. I was shown to my room, a very luxurious room. The mansion was huge. I was very young and I got scared because it was so big. Epstein brought me to a room with a massage parlor. Epstein made me engage [in] sexual activities with him there.

9. You can see how young I looked in the photograph below [see insert page 3].

10. Epstein took me on a ferry boat on one of the trips to New York City and there he took the picture above. I was approximately 15 or 16 years old at the time.

11. Over the next few weeks, Jeffrey Epstein and Ghislaine Maxwell trained me to do what they wanted, including sexual activities. The training was in New York and Florida, at Epstein's mansion. It was basically every day and it was like going to school. I also had to have sex with Epstein many times.

12. I was trained to be "everything a man wanted me to be." It wasn't just sexual training—they wanted me to be able to cater to all the needs of the men they were going to send me to. They said that they loved that I was very compliant and knew how to keep my mouth shut about what they expected me to do.

13. Epstein and Maxwell also told me that they wanted me to produce information for them in addition to performing sex on the men. They told me to pay attention to the details about what the men wanted, so I could report back to them.

14. While I had juvenile hopes of bettering my life, from very early on I was also afraid of Epstein. Epstein told me he was a billionaire. I told my mother that I was working for this rich guy, and she said "go, go far away." Epstein had promised me a lot, and I knew if I left I would be in big trouble. I was witness to a lot of illegal and bad behavior by Epstein and his friends. If I left Epstein, he knew all kinds of powerful people. He could have had me killed or abducted, and I knew he was capable of that if I did not obey him. He let me know that he knew many people in high places. Speaking about himself, he said "I can get away" with things. Even as a teenager, I understood what this meant and it scared me, as I believe he intended.

*15. I visited and traveled
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*16. To illustrate my conne
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15. I visited and traveled with Jeffrey Epstein from 1999 through the summer of 2002, and during that time I stayed with him for sexual activities at each of his houses (or mansions) in locations including New York City, New York; the area of Santa Fe, New Mexico; Palm Beach, Florida; an island in the U.S. Virgin Islands; and Paris, France. I had sex with him often in these places and also with the various people he demanded that I have sex with. Epstein paid me for many of these sexual encounters. Looking back, I realize that my only purposes for Epstein, Maxwell, and their friends was to be used for sex.

16. To illustrate my connection to these places, I include four photographs taken of me in New Mexico [see insert page 3 for one of the photographs mentioned]. The first one is a museum in Santa Fe, New Mexico. We had gone sightseeing for the day. Epstein took this picture of me. I was approximately 17 at the time, judging from the looks of it. At the end of the day we returned to Epstein's Zorro Ranch. The second picture is me on one of Epstein's horses on the ranch in New Mexico. The following two are from wintertime in New Mexico.

17. When I was with him, Epstein had sex with underage girls on a daily basis. His interest in this kind of sex was obvious to the people around him. The activities were so obvious and bold that anyone spending any significant time at one of Epstein's residences would have clearly been aware of what was going on.

18. Epstein's code word for sexual encounters was that it was a "massage." At times the interaction between Epstein and the girls would start in the massage room setting, but it was always a sexual encounter and never just a massage.

19. In addition to constantly finding underage girls to satisfy their personal desires, Epstein and Maxwell also got girls for Epstein's friends and acquaintances. Epstein specifically told me that the reason for him doing this was so that they would "owe him," they would "be in his pocket," and he would "have something on them." I understood that Epstein thought he could get leniency if he was ever caught doing anything illegal, or that he could escape trouble altogether.

Roberts submitted her declaration in support of a motion to be added as a plaintiff in a suit (ongoing, as of this writing) that sought to overturn a non-prosecution agreement that Jeffrey Epstein would reach with the government. Roberts was seeking to join a case brought against the government by two other victims, but a judge denied her motion in April of 2015, explaining that the case had already been pending for several years, and it was unneccesary to add an additional plaintiff.

Roberts's declaration, which goes on for another eight pages, and makes twenty-four additional points, was stricken from the record—the judge explained that the "lurid" and "unnecessary details" involving "non-parties" to the lawsuit against the government, were "immaterial and impertinent" to the proceedings.

Through a representative, Ghislaine Maxwell called the allegations against her "obvious lies," after which Roberts filed a defamation suit against Maxwell. In an answer filed in the suit, Maxwell elaborated that Roberts's "story of abuse at the hands of Ms. Maxwell" was "fabricated" for financial gain.

Alicia: May 20, 1997

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CHAPTER 35

Alicia: May 20, 1997

Donald Trump's instincts regarding Jeffrey Epstein were solid. But if the reporters who were beginning to look into Epstein's mysterious background had dug a bit further, there's a chance they would have hit pay dirt as well—and not just in Palm Beach.

In California, for instance, a paper trail already stretched from the Santa Monica Police Department to Epstein's front door.

In the spring—almost the summer—of 1997, a call came in to the police. The young woman who placed it—a young actress who'd appeared on *Baywatch* and *General Hospital*—said she'd been sexually assaulted at a trendy hotel called Shutters on the Beach.

The officer who took the call knew the woman's name—Alicia*—and her voice. A week earlier, she'd told him about an encounter with Epstein. The woman had not wanted to make a formal complaint at the time. But she had taken the cop's card, and now he was happy to hear that she'd changed her mind.

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* Alicia's name, some identifying details, and dialogue have been changed.

In a shaky voice, Alicia described Epstein as a tallish man—five feet eleven or six feet in height was her guess—with gray hair and brown eyes. He was the owner of a large black four-door Mercedes and was a regular at Shutters on the Beach, which was the kind of place that cost one thousand dollars a night and was frequented by actors, agents, and other Hollywood types.

Alicia told the cop that she was a model and actress herself. She'd known Epstein for about a month. They had a friend in common, and she'd sent him her head shots.

Then, through an assistant, Epstein had invited her to meet in his room at the hotel.

Alicia said she was having reservations, the officer wrote in his report, *because generally interviews are not conducted in hotel rooms.*

According to her, things turned frightening quickly.

> *She was unsure she was safe because although she wanted to land the job as a 'Victoria's Secret' catalog model she felt as though Epstein was attempting to get her to act in an unprofessional manner for a model.*

Epstein wore navy blue sweatpants and a white T-shirt, she recalled. The T-shirt had the letters *USA* printed on it in patriotic red, white, and blue.

> *Epstein told her to undress and actually assisted her to do so while saying 'let me manhandle you for a second.'*

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Then, Alicia told the cop, *Epstein groped her buttocks against her will while acting as though he was evaluating her body.* Alicia had stopped Epstein, and left the room, but couldn't get over the incident.

At the top of his crime report, the officer wrote "Sexual Battery." But Epstein was never charged in the incident. "The Santa Monica Police Department discounted every one of [Alicia's] allegations of improper conduct by Jeffrey Epstein and they took no action on this 1997 complaint," Epstein's West Palm Beach attorney, Jack Goldberger, told the *Palm Beach Post* in 2010.

"The cops said it'd be my word against his," Alicia told the paper. "And since he had a lot of money, I let it go. I hadn't thought much about it since, until I saw his picture online. And now, I want everybody to know how much of a creep he's always been."

CHAPTER 36

Graydon Carter: December 2002

Graydon Carter, the legendary editor of *Vanity Fair,* likes to get to his office early, well before the rest of his staff files in.

Most monthly magazines operate at a leisurely pace—three weeks of coming up with ideas, assigning articles, and shooting the shit in the corporate kitchen followed by one frantic week when all the actual editing gets done. But this isn't the case at *Vanity Fair,* which runs hard-hitting investigative pieces alongside its glitzy celebrity profiles. There are also parties to plan and host—incredibly glamorous parties, including the annual Oscar-night bash, which is more fun and far more exclusive than the Academy Awards ceremony itself. *Vanity Fair* is an old, famous brand. But Carter is its public face, just as Anna Wintour is the face of Condé Nast's iconic fashion magazine, *Vogue.*

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CHAPTER 36

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One cover of *Vanity Fair* can turn a minor celebrity into a superstar. And a single thoroughly researched story can bring down a corporate overlord.

Carter's easy to recognize: the pompadour of white hair, like a lion's mane. The Santa Claus body stuffed into an impeccably tailored bespoke suit. He wears his fame lightly. But he could not be more serious about his responsibilities, which are weighing heavily on him this month. Months earlier, he'd assigned a piece to Vicky Ward, an Englishwoman who wrote frequently for *Vanity Fair.* He'd meant for it to be an easy assignment: Ward was pregnant with twins. She wasn't allowed to fly. But here was a story right on her doorstep. A nice, easy profile of Jeffrey Epstein. Who was he, really? Carter knew he threw fabulous parties attended by academics, billionaires, and beautiful women. Recently he'd flown Bill Clinton to Africa. But no one seemed to know how he had made his fortune. Epstein's story reminded the editor of F. Scott Fitzgerald's *The Great Gatsby.*

Carter himself could have stepped out of a novel—though in his case, the author would be Horatio Alger. A Canadian college dropout who'd worked as a railroad lineman, he arrived in New York in his late twenties and commenced an astonishingly quick rise up the social and media ladders. But where Carter was open and outgoing, Epstein really was Gatsby-like—very little about him was known. Maybe, Carter thought, Ward could find out. What did Epstein do, exactly, for money? Why was he so secretive? Why were so many brilliant and powerful men drawn to him? And where did those beautiful women come from?

Almost immediately, Epstein began a campaign to discredit Ward. He prevailed upon Conrad Black, the press baron and

Epstein's Palm Beach neighbor—who was also a step-uncle of Vicky Ward's husband—to ask Ward to drop the story. But Ward was tenacious, and what she came back with was dynamite. More interesting and much more salacious than anything Carter had imagined.

Now Carter's staff was putting in the hours it would take to confirm all the things she'd uncovered, picking the ones they could publish and laying them all out in a narrative that would be no less explosive than the facts it contained.

Vicky Ward: October

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CHAPTER 37

Vicky Ward: October 2002

Epstein went out of his way to spin the *Vanity Fair* story to his own ends, and soon after she got the assignment, Vicky Ward's phone began to ring off the hook: calls from Ace Greenberg and Jimmy Cayne, the current head of Bear Stearns; from Les Wexner; from academics, scientists, and movers and shakers who counted Epstein among their friends.

Then there were the calls from Epstein himself. He wouldn't go on the record, but despite the rumors he'd spread behind Ward's back, he was happy to talk informally, even give her a tour of his Manhattan mansion and trot out stories that he had dined out on for years. By most accounts, Epstein could be extremely charming—even if it had taken Ghislaine to teach him which forks to use when—and he did his best to charm Vicky Ward. But she was not easily seduced, and she turned out to have a keen eye for Epstein's missteps.

Over tea in his town house, she noticed, Epstein ate all the finger food that had been put out for both of them. She found it odd that the only book this supposedly brilliant man had left for her to see was a paperback by the Marquis de Sade. And then there was the call afterward from one of Epstein's assistants—a woman Ward did not know—who told her, "Jeffrey wanted me to tell you that you looked so pretty."

Ward *is* pretty, with fine English features and flowing blond hair. She was also *very* pregnant then, with a bad case of morning sickness. She threw up often, sometimes in public, and these clumsy advances on Epstein's part only added to her ever-present nausea. For a man who was supposedly brilliant, he'd struck her, oddly, as not very *smart*.

"Epstein is charming, but he doesn't let the charm slip into his eyes," she wrote. "They are steely and calculating, giving some hint at the steady whir of machinery running behind them. 'Let's play chess,' he said to me, after refusing to give an interview for this article. 'You be white. You get the first move.' It was an appropriate metaphor for a man who seems to feel he can win no matter what the advantage of the other side. *His* advantage is that no one really seems to know him or his history completely or what his arsenal actually consists of. He has carefully engineered it so that he remains one of the few truly baffling mysteries among New York's moneyed world. People know snippets, but few know the whole."

The testimonials Epstein's friends gave were glowing: "I think we both possess the skill of seeing patterns," Les Wexner told her. "Jeffrey sees patterns in politics and financial markets, and I see patterns in lifestyle and fashion trends. My skills are

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not in investment strategy, and, as everyone who knows Jeffrey knows, his are not in fashion and design. We frequently discuss world trends as each of us sees them."

"I'm on my 20th book," said Alan Dershowitz, who'd met Epstein in 1997. "The only person outside of my immediate family that I send drafts to is Jeffrey."

But Ward also talked to other sources, who had their own questions and qualms about Jeffrey Epstein. Some were involved in lawsuits against him. Others had served on prestigious boards with him. One who had witnessed Epstein's aborted stint on the board of Rockefeller University called him arrogant.

One powerful investment manager wondered about Epstein's conspicuous absence from New York's trading floors. "The trading desks don't seem to know him," he says. "It's unusual for animals *that* big to not leave any footprints in the snow."

Ward uncovered legal documents, including Epstein's interview with the SEC, given in the wake of his departure from Bear Stearns. She visited a federal prison in Massachusetts and spoke at length with Steven Hoffenberg, who told her that Epstein had made a major mistake in taking Bill Clinton to Africa. "I always told him to stay below the radar," Hoffenberg said. He made other accusations, about Epstein's financial practices, which Epstein denied—and Ward knew that Hoffenberg, the Ponzi-scheme mastermind, was not to be trusted. But she did find it strange that throughout the reporting process Epstein was much less openly concerned with what she'd found out about his finances than with what she'd uncovered about his dealings with women.

Time and again, he would call and ask her: "What do you have on the *girls?*"

* * *

One young woman Ward talked to had been invited by Ghislaine Maxwell to attend a party at Epstein's town house. There, the woman had noticed, female guests far outnumbered the male guests. "These were not women you'd see at Upper East Side dinners," the woman had said. "Many seemed foreign and dressed a little bizarrely."

"This same guest also attended a cocktail party thrown by Maxwell that Prince Andrew attended, which was filled, she says, with young Russian models," Ward wrote. " 'Some of the guests were horrified,' the woman says."

Another source, one who had worked with Epstein, said, "He's reckless, and he's gotten more so. Money does that to you. He's breaking the oath he made to himself—that he would never do anything that would expose him in the media. Right now, in the wake of the publicity following his trip with Clinton, he must be in a very difficult place."

Vicky Ward: Novembe

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CHAPTER 38

Vicky Ward: November 2002

What I had 'on the girls,'" Ward explained in a *Daily Beast* article published after Epstein's arrest, "were some remarkably brave first-person accounts. Three on-the-record stories from a family: a mother and her daughters who came from Phoenix. The oldest daughter, an artist whose character was vouchsafed to me by several sources, including the artist Eric Fischl, had told me, weeping as she sat in my living room, of how Epstein had attempted to seduce both her and, separately, her younger sister, then only 16."

Ward had written it all down in her notes. She had crossed the t's, dotted the i's.

But when she called Epstein to get his response, he denied the allegations completely.

"Just the mention of a 16-year-old girl," Epstein told her, "carries the wrong impression. I don't see what it adds to the piece. And that makes me unhappy."

If some sort of criminal investigation had taken place, that would have been one thing. But, at that time, no criminal investigation into Epstein's affairs had been launched. And in the absence of an investigation, the rumors of Epstein's dealings with very young women seemed to be just that—rumors.

Graydon Carter consulted his lawyers, his editors, and his fact-checkers. And then something odd and disturbing happened at the Condé Nast building, then in Times Square.

As usual, Carter had come into the office early. He swiped his key card in the lobby, pressed the elevator button, and arrived in the hallway outside the reception area on the twenty-first floor.

It would have been a perfect time to review Ward's story.

Her description of Epstein's town house—which is said to have been the largest private residence in New York City at the time—was priceless: "Inside, amid the flurry of menservants attired in sober black suits and pristine white gloves, you feel you have stumbled into someone's private Xanadu," she'd written. "This is no mere rich person's home, but a high-walled, eclectic, imperious fantasy that seems to have no boundaries. The entrance hall is decorated not with paintings but with row upon row of individually framed eyeballs; these, the owner tells people with relish, were imported from England, where they were made for injured soldiers. Next comes a marble foyer, which does have a painting, in the manner of Jean Dubuffet... but the host coyly refuses to tell visitors who painted it. In any case,

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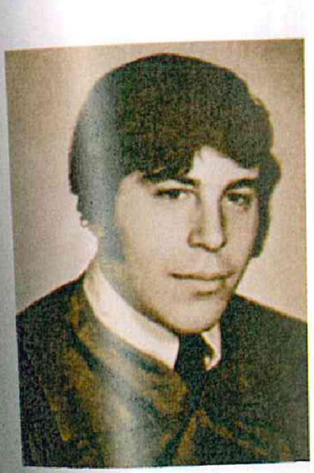

Jeffrey Epstein, Coney Isl
circa 1969 *(Anonym*

CHAPTER 52

Jeffrey Epstein: June 30, 2008

The Palm Beach County Main Detention Center is on the west side of Lake Worth Lagoon, which separates West Palm Beach from the island of Palm Beach. Epstein's home on El Brillo Way is five miles to the east. Mary's high school is several miles to the west.

It's fitting, somehow, that this jail—which is the jail Epstein ends up in, after turning himself in to the local sheriff—lies in between the two points.

The detention center's inmates, their families, and their lawyers call it the Gun Club, a reference not only to the jail's address, on Gun Club Road, but also to its population of hustlers, burglars, drug dealers, rapists, and murderers. There's the occasional hooker as well. And, from time to time, Haitian refugees are lodged there.

There are three thousand inmates in all.

Some wait a year before making their way to the courthouse, their date with the public defender, and an appearance before the judge. Some get out much sooner, if only they can make bail. But there's no bail without money—or at least collateral—and, of course, being without money is often what lands people in jail in the first place.

Jeffrey Epstein could have posted bail for every single inmate in the Gun Club.

But that's just one of the ways in which Epstein is unlike his fellow inmates. He's an admitted pedophile now. Even a famous one.

And, famously, pedophiles tend to fare poorly in jail.

Luckily for Epstein, Ric Bradshaw, the sheriff in charge of local jails, transfers Epstein to the infirmary, where he spends exactly one night before being transferred seven miles up the road to a much smaller, safer location: the Palm Beach County *Central* Detention Center—or, as it's known, the Stockade.

"It's not somewhere we'd put a serial killer," Ric Bradshaw says.

Most of the residents here are addicts who take part in drug education programs, prostitutes, petty criminals, and drunks. It's a far safer place for Epstein to be, and, unlike other inmates (except, of course, those being held in solitary), he'll end up with his own cell, even his own wing, which he has to himself. Epstein's allowed to pay for a security guard, who sits outside the cell and keeps watch. And he's allowed any number of visitors.

For a convicted felon, it's an extraordinary benefits package.

But according to Sheriff Bradshaw, who also oversees the Stockade, Epstein is incredulous over the treatment he is receiving.

"He was astonished that he had to go to prison at all," Bradshaw remembers.

"Let's just say he didn't think he belonged there."

Sheriff Ric Bradshaw: Jun

"Our job," says Ric Bradsh
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CHAPTER 53

Sheriff Ric Bradshaw: June 2015

"Our job," says Ric Bradshaw, "was to make sure nobody killed him."

Sheriff Bradshaw could have stepped off the set of a Western. Imposingly tall, with his cowboy hat, Kurt Russell mustache, and slow, southern drawl, he looks *exactly* like an old-school law officer—the kind you once would have found patrolling the streets of Tombstone, Deadwood, or Dodge City. He's been a lawman for forty-four years, eleven of which have been spent as the head of the county's jails. As a rule, he doesn't talk to the media, and today, as he talks about Jeffrey Epstein, he's clearly uncomfortable, fidgety, and ill disposed.

But here in his wood-paneled office on the first floor of the Gun Club, Bradshaw remembers Epstein quite well.

"We have a thousand sexual predators in the county," he says. "When he arrived here, he was one of them. He definitely fit the category we have to ensure the general population is not going to take their anger out on."

Although he understands that Epstein is a sex offender and has a sense of the scope of his alleged crimes, Bradshaw's also aware that the actual *conviction* was for a "low-level felony." At the request of Epstein's attorneys—a request that is confirmed by a court order—Epstein is quickly granted "work release."

What it means in practice is that six days a week, for up to sixteen—sixteen!—hours each day, Epstein is allowed to leave the Stockade to be driven by a designated driver in a car earmarked especially for him to any one of three places: his lawyer Jack Goldberger's office in downtown West Palm Beach, the Palm Beach office of a science foundation that he's established, and his house on El Brillo Way.

Despite the ankle bracelet he wears, it could be argued that as a fabulously rich prisoner with two of his own jets parked nearby, at the Palm Beach International Airport, Epstein might have posed a flight risk.

Instead, every day of the week save one, he's allowed to go to his lawyer's, to go to his office, or simply to go home.

Did the deputy in charge of Epstein go to the house on El Brillo Way?

Ric Bradshaw considers the question.

"Yes," he says, "he did."

Did the deputy go inside the house?

"Yes, he did."

If so, the deputy might have encountered Nadia Marcinkova, who was staying on El Brillo Way at the time. He may also have

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That would be Jean-Luc Brunel.

For the duration of Jeffrey Epstein's stay—or half stay—in the Stockade, Brunel's taken up residence in the house on El Brillo Way.

CHAPTER 54

Jeffrey Epstein: June 30, 2008–July 21, 2009

According to Sheriff Ric Bradshaw, the treatment Jeffrey Epstein received in the Stockade was not preferential. By some measures, he isn't wrong.

In 2010, millionaire polo mogul John Goodman killed a young man while driving drunk. He was convicted but was allowed to spend two years under house arrest while his appeal was being tried.

Like Epstein, Goodman was allowed visitors. But Goodman's visitor list was nothing like Jeffrey Epstein's.

Nadia Marcinkova is said to have visited Epstein in jail more than seventy times.

Epstein's assistant Sarah Kellen also visited Epstein in the Stockade.

A Russian mixed martial artist named Igor "Houdini" Zinoviev was another visitor, as was a disbarred lawyer and financial

fraudster named Arnold Pr
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Sheriff Bradshaw wants
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But even US attorney Aco
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"Epstein appears to have
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CHAPTER 54

2008–July 21, 2009

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Kellen also visited Epstein in the

l artist named Igor "Houdini" Zino-
was a disbarred lawyer and financial

fraudster named Arnold Prosperi, whose own prison sentence had been commuted by Bill Clinton on the day before Clinton left office.

Sheriff Bradshaw wants to be clear: none of these visits was conjugal.

But even US attorney Acosta, who negotiated Epstein's unusual agreement with the government, would say that Epstein's arrangement was highly irregular.

"Epstein appears to have received highly unusual treatment while in jail," Acosta would say in a letter addressed to the general public. "Although the terms of confinement in a state prison are a matter appropriately left to the state of Florida and not federal authorities, without doubt, the treatment that he received while in state custody undermined the purpose of a jail sentence."

And, of course, Epstein's stay at the Stockade was subsidized by taxpayers.

CHAPTER 55

R. Alexander Acosta's letter to the general public, March 20, 2011

To whom it may concern:

I served as U. S. Attorney for the Southern District of Florida from 2005 through 2009. Over the past weeks, I have read much regarding Mr. Jeffrey Epstein. Some appears true, some appears distorted. I thought it appropriate to provide some background, with two caveats: (i) under Justice Department guidelines, I cannot discuss privileged internal communications among department attorneys and (ii) I no longer have access to the original documents, and as the matter is now nearly 4 years old, the precision of memory is reduced.

The Epstein matter was originally presented to the Palm Beach County State Attorney. Palm Beach Police alleged that Epstein unlawfully hired underage high-

school females to provic
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CHAPTER 55

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lawfully hired underage high-

school females to provide him sexually lewd and erotic massages. Police sought felony charges that would have resulted in a term of imprisonment. According to press reports, however, in 2006 the State Attorney, in part due to concerns regarding the quality of the evidence, agreed to charge Epstein only with one count of aggravated assault with no intent to commit a felony. That charge would have resulted in no jail time, no requirement to register as a sexual offender and no restitution for the underage victims.

Local police were dissatisfied with the State Attorney's conclusions, and requested a federal investigation. Federal authorities received the State's evidence and engaged in additional investigation. Prosecutors weighed the quality of the evidence and the likelihood for success at trial. With a federal case, there were two additional considerations. First, a federal criminal prosecution requires that the crime be more than local; it must have an interstate nexus. Second, as the matter was initially charged by the state, the federal responsibility is, to some extent, to back-stop state authorities to ensure that there is no miscarriage of justice, and not to also prosecute federally that which has already been charged at the state level.

After considering the quality of the evidence and the additional considerations, prosecutors concluded that the state charge was insufficient. In early summer 2007, the prosecutors and agents in this case met with Mr. Epstein's attorney, Roy Black. Mr. Black is perhaps best known for his successful defense of William

Kennedy Smith. The prosecutors presented Epstein a choice: plead to more serious state felony charges (that would result in 2 years' imprisonment, registration as a sexual offender, and restitution for the victims) or else prepare for a federal felony trial.

What followed was a year-long assault on the prosecution and the prosecutors. I use the word assault intentionally, as the defense in this case was more aggressive than any which I, or the prosecutors in my office, had previously encountered. Mr. Epstein hired an army of legal superstars: Harvard Professor Alan Dershowitz, former Judge and then Pepperdine Law Dean Kenneth Starr, former Deputy Assistant to the President and then Kirkland & Ellis Partner Jay Lefkowitz, and several others, including prosecutors who had formerly worked in the U.S. Attorney's Office and in the Child Exploitation and Obscenity Section of the Justice Department. Defense attorneys next requested a meeting with me to challenge the prosecution and the terms previously presented by the prosecutors in their meeting with Mr. Black. The prosecution team and I met with defense counsel in Fall 2007, and I reaffirmed the office's position: two years, registration and restitution, or trial.

Over the next several months, the defense team presented argument after argument claiming that felony criminal proceedings against Epstein were unsupported by the evidence and lacked a basis in law, and that the office's insistence on jail-time was motivated by a zeal to overcharge a man merely because he is wealthy. They bolstered their arguments with legal opinions from

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well-known legal experts. One member of the defense team warned me that the office's excess zeal in forcing a good man to serve time in jail might be the subject of a book if we continued to proceed with the matter. My office systematically considered and rejected each argument, and when we did, my office's decisions were appealed to Washington. As to the warning, I ignored it.

The defense strategy was not limited to legal issues. Defense counsel investigated individual prosecutors and their families, looking for personal peccadilloes that may provide a basis for disqualification. Disqualifying a prosecutor is an effective (though rarely used) strategy, as eliminating the individuals most familiar with the facts and thus most qualified to take a case to trial harms likelihood for success. Defense counsel tried to disqualify at least two prosecutors. I carefully reviewed, and then rejected, these arguments.

Despite the army of attorneys, the office held firm to the terms first presented to Mr. Black in the original meeting. On June 30, 2008, after yet another last minute appeal to Washington D.C. was rejected, Epstein pled guilty in state court. He was to serve 18 months imprisonment, register as a sexual offender for life, and provide restitution to the victims.

Some may feel that the prosecution should have been tougher. Evidence that has come to light since 2007 may encourage that view. Many victims have since spoken out, filing detailed statements in civil cases seeking damages. Physical evidence has since been discovered. Had these additional statements and evidence been known, the outcome may have been different. But they were not known to us at the time.

A prosecution decision must be based on admissible facts known at the time. In cases of this type, those are unusually difficult because victims are frightened and often decline to testify or if they do speak, they give contradictory statements. Our judgment in this case, based on the evidence known at the time, was that it was better to have a billionaire serve time in jail, register as a sex offender, and pay his victims restitution than risk a trial with a reduced likelihood of success. I supported that judgment then, and based on the state law as it then stood and the evidence known at the time, I would support that judgment again.

Epstein's treatment, while in state custody, likewise may encourage the view that the office should have been tougher. Although the terms of confinement in a state prison are a matter appropriately left to the State of Florida, and not federal authorities, without doubt, the treatment that he received while in state custody undermined the purpose of a jail sentence.

Some may also believe that the prosecution should have been tougher in retaliation for the defense's tactics. The defense, arguably, often failed to negotiate in good faith. They would obtain concessions as part of a negotiation and agree to proceed, only to change their minds, and appeal the office's position to Washington. The investigations into the family lives of individual prosecutors were, in my opinion, uncalled for, as were the accusations of bias and/or misconduct against individual prosecutors.

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At times, some prosecutors felt that we should just go to trial, and at times I felt that frustration myself. What was right in the first meeting, however, remained right irrespective of defense tactics. Individuals have a constitutional right to a defense. The aggressive exercise of that right should not be punished, nor should a defense counsel's exercise of their right to appeal a U.S Attorney to Washington D.C. Prosecutors must be careful not to allow frustration and anger with defense counsel to influence their judgment.

After the plea, I recall receiving several phone calls. One was from the FBI Special Agent-In-Charge. He called to offer congratulations. He had been at many of the meetings regarding this case. He was aware of the tactics of the defense, and he called to praise our prosecutors for holding firm against the likes of Messrs. Black, Dershowitz, Lefkowitz and Starr. It was a proud moment. I also received calls or communications from Messrs. Dershowitz, Lefkowitz and Starr. I had known all three individuals previously, from my time in law school and at Kirkland & Ellis in the mid 90s. They all sought to make peace. I agreed to talk and meet with each of them after Epstein pled guilty, as I think it important that prosecutors battle defense attorneys in a case and then move on. I have tried, yet I confess that this has been difficult to do fully in this case.

The bottom line is this: Mr. Jeffrey Epstein, a billionaire, served time in jail and is now a registered sexual offender. He has been required to pay his victims restitution, though restitution clearly cannot compensate for the crime. And we know much more today about his crimes because victims have come forward to speak out. Some may disagree with prosecutorial judgments made in this case, but those individuals are not the ones who at the time reviewed the evidence available for trial and assessed the likelihood of success.

Respectfully,
R. Alexander Acosta
Former U.S. Attorney
Southern District of Florida

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Former U.S. Attorney
Southern District of Florida

PART VI

Aftermath

CHAPTER 56

Jeffrey Epstein: July 2009

Jeffrey Epstein walks out of the Stockade on July 21, 2009, having served less than thirteen months of his eighteen-month sentence. One of the concessions his lawyers have gotten while working out his plea-deal guarantees is that the media not be alerted to the time and day of his departure.

But from now on, Epstein, who is fifty-six, will carry the mark of a level 3 sex offender—level 1 being the lowest, and level 3 indicating the highest possible risk of a future criminal act of a sexual nature. Wherever he goes, he will be forced to register as such.

Every ninety days, Epstein will have to check in with the authorities. Every year, the New York City Police Department will take his mug shot. And for a full year, Epstein will be under house arrest in Palm Beach.

This last prohibition doesn't stop him from flying, with court approval, on his own planes to New York and to Little Saint Jeff's, where the locals have taken to referring to Epstein's 727 as the Lolita Express.

There are other restrictions, of course, that Epstein is supposed to abide by. He has to provide the state of Florida with a list of all the motor vehicles, boats, and airplanes he owns. The full list includes two Escalades, six Suburbans, two Ford F-150s, two Harley-Davidsons, a Land Rover, a Hummer H2, a thirty-four-foot JVC boat, and a thirty-five-foot Donzi powerboat.

Three of his five planes turn out to be registered to a company called Air Ghislaine, Inc.

As a registered sex offender, Epstein is legally obliged to undergo psychiatric treatment. This is a restriction he'll get around by having his own psychologist submit a report to law enforcement officers.

Epstein is also prohibited from accessing pornography on the Internet and using social networking for sexual purposes.

For Jeffrey Epstein, there will be no Bangbros, Tinder, or Swingles.com.

There *will* be lawsuits.

Six weeks before probation ends, he settles with seven women who sue him in civil court. But Epstein can easily afford the settlement payments. He won't be going back to jail, and in regard to further prosecution for any criminal actions, his troubles are behind him.

Not everyone who's spent time in his company will be so lucky.

Alfredo Rodriguez: Aug

Epstein's houseman, Al
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CHAPTER 57

Alfredo Rodriguez: August 2009

Epstein's houseman, Alfredo Rodriguez, also ends up with a prison sentence.

In a sworn statement, Rodriguez talks about Epstein's maid, Lupita, who had complained to him about having to clean up after Epstein's "massages." Lupita, who was a devout Catholic, had cried as she described the stained towel and sex toys.

Rodriguez was fired by Epstein, he says, when he called 911 after seeing a strange car—a "beater"—in Epstein's driveway.

As it turned out, the car had belonged to one of Epstein's masseuses.

On his way out of the house on El Brillo Way, he took some of Epstein's papers, which he failed to produce when questioned by Chief Reiter's investigators.

For years, Rodriguez tried and failed to find work as a house manager. No one wanted to hire someone who'd worked for

Jeffrey Epstein. Finally, desperately, he tried to sell the information he'd stolen.

The papers named underage girls and the places where Epstein had taken them. The list included locations in California, Paris, New Mexico, New York, and Michigan. The papers also included the names, addresses, and phone numbers of famous individuals—Henry Kissinger, Mick Jagger, Dustin Hoffman, Ralph Fiennes, David Koch, Ted Kennedy, Donald Trump, Bill Richardson, Bill Clinton, and former Israeli prime minister Ehud Barak among them.

This was intriguing, if not at all damning. Epstein made a habit of collecting such information for future use. But information pertaining to the girls would have bolstered the state's case against Jeffrey Epstein, and by withholding it from the Palm Beach PD and the FBI, Rodriguez had committed a crime.

In his defense, Rodriguez would say that the papers were an "insurance policy." Without them, he believed, Epstein would have made him "disappear."

But now Rodriguez needed the money. And so a few weeks after Epstein's release from the Stockade, he approached a lawyer who was representing some of Epstein's masseuses. He had the "holy grail," he insisted. A "golden nugget." The names of hundreds of girls, he said, who had been abused by Epstein.

The lawyer told Rodriguez in no uncertain terms that he was obliged to turn whatever he had over to the authorities. By demanding money for the information, Rodriguez was committing another crime.

According to a sworn statement by Christina Pryor, a special agent with the FBI, Rodriguez "persisted that he would only turn over the information in his possession in exchange for $50,000."

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Two months later, on October 28, the lawyer called Rodriguez, who insisted once more on being paid for the information. The lawyer told him that an associate would be in touch.

What the lawyer knew and Rodriguez did not know was that the associate in question was an undercover employee (UCE) of the FBI. A few days later, on November 2, the UCE calls Rodriguez and sets up a meeting, which takes place the following day.

"During the meeting, Rodriguez produced a small bound book and several sheets of legal pad paper containing handwritten notes," Special Agent Pryor would say in her statement. She continues:

> *Rodriguez explained that he had taken the bound book from his former employer's residence while employed there in 2004 to 2005 and that the book had been created by persons working for his former employer. Rodriguez discussed in detail the information within the book and identified important information to the UCE. In addition, Rodriguez admitted he had previously lied to the FBI. Rodriguez asked the UCE about the $50,000, took possession of the money, and began counting it.*
>
> *Rodriguez was then detained for Obstruction of Official Proceedings, Title 18, U.S. Code, Section 1512(c), and questioned. After Miranda warnings were administered by agents, Rodriguez waived his rights and signed a written waiver of those rights. Rodriguez admitted that he had the documents and book in his possession and had never turned them over to local law enforcement or the FBI. In addition, Rodriguez*

> *advised he had witnessed nude girls whom he believed were underage at the pool area of his former employer's home, knew that his former employer was engaging in sexual contact with underage girls, and had viewed pornographic images of underage girls on computers in his employer's home. Rodriguez was then released from custody for further investigation.*
>
> *The items that Rodriguez had attempted to sell to the UCE for $50,000.00 were reviewed by an agent familiar with the underlying criminal investigation. As Rodriguez had described, the items contained information material to the underlying investigation that would have been extremely useful in investigati[ng] and prosecuting the case, including the names and contact information of material witnesses and additional victims. Had those items been produced in response to the inquiries of the state law enforcement officers or the FBI Special Agents, their contents would have been presented to the federal grand jury.*

Following his release, Alfredo Rodriguez was arrested again. He appeared in court on June 18, 2010, facing charges of corruptly concealing records and documents. Dressed in a blue jumpsuit and shackles, he apologized for his crimes and asked the court to be merciful.

He received a sentence of eighteen months.

It was the same punishment that Jeffrey Epstein had gotten for his crimes. But unlike Epstein, Alfredo Rodriguez served his time in a federal prison and did not ask for, or receive, permission to go on work release.

Prince Andrew: 2011

Prince Andrew also fares
imprisonment.

The two men are old
Ghislaine Maxwell introduced
time in the 1990s. In 2000, Eps
Castle to celebrate the queen's
flew to Sandringham, the quee
a party Prince Andrew threw for

The prince had also visited
Palm Beach as well as in New
Roberts made in her 2015 decla
asked her to give the prince w
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According to the *Guardian*,
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CHAPTER 58

Prince Andrew: 2011

Prince Andrew also fares poorly in the wake of Epstein's imprisonment.

The two men are old friends. They have been ever since Ghislaine Maxwell introduced the prince to her then-beau, sometime in the 1990s. In 2000, Epstein had been invited to Windsor Castle to celebrate the queen's birthday. Six months later, Epstein flew to Sandringham, the queen's estate in Norfolk, England, for a party Prince Andrew threw for Ghislaine's thirty-ninth birthday.

The prince had also visited Epstein on several occasions, in Palm Beach as well as in New York. And if allegations Virginia Roberts made in her 2015 declaration are to be believed, Epstein asked her to give the prince whatever he required, then report back with the details.

According to the *Guardian*, Epstein and the prince had partied together at Windsor Castle, in Saint-Tropez, and in Thailand, where "Andrew was pictured on a yacht surrounded by topless women."

According to Roberts's lawsuit, Epstein had forced her into the prince's bed on Little Saint Jeff's.

After Epstein's conviction, the British press were using another name for Little Saint Jeff's: Sex Island. The *Guardian* reported that the manager of two Virgin Islands–based corporations owned by Epstein happened to be the wife of the governor of the Virgin Islands. There were allegations involving a million-dollar donation that Epstein had made to the governor's reelection campaign. And then there was Roberts's claim that she had been forced to have sex with the prince on the island as well as in New York and in London.

Invariably, the photograph of Prince Andrew with his arm around the bare midriff of a very young-looking Virginia Roberts ran with stories that appeared in the tabloids.

"It is emphatically denied that the Duke of York had any form of sexual contact or relationship" with Roberts, Buckingham Palace spokespersons would say. "The allegations made are false and without any foundation."

The prince's ex-wife, Sarah Ferguson, the Duchess of York, while on a skiing trip with the prince and their daughter Eugenie in Switzerland, told reporters, "He is the greatest man there is. It was the finest moment of my life in 1986 when I married him. He is a great man, the best in the world."

"I won't stand by—because I know what it feels like to have salacious lies made up about you—and not support him so publicly because they are just shockingly accusatory allegations,

which I don't think is right," s
viewed by *Today* host Matt La
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But at the same time, a c
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"I've seen him treat his st
said a former aide to the prince
personal protection officers,
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graces at all. Sure, if you're a la
then I bet he's utterly charmin

Despite all this, the prince had
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strolling in Central Park.

Some few months before it
businessman had secretly tap
five hundred thousand pounds

"If you want to meet him i
"look after me, and he'll look aft

"Once again," she said aft
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Prince Andrew had had hi
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British press were using another
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which I don't think is right," she said a few days later when interviewed by *Today* host Matt Lauer. "It's a defamation of character, and as a great father and a humongously good man and all the work he does for Britain I won't stand by and let him have his character defamed to this level."

But at the same time, a certain schadenfreude attended the good man's fall from grace, and former associates kept coming out of the woodwork to dish to the press.

"I've seen him treat his staff in a shocking, appalling way," said a former aide to the prince. "He's been incredibly rude to his personal protection officers, literally throwing things on the ground and demanding they 'fucking pick them up.' No social graces at all. Sure, if you're a lady with blond hair and big boobs, then I bet he's utterly charming."

Despite all this, the prince had stuck by Epstein. There was even a photo, frequently trotted out by the tabloids, of the two of them strolling in Central Park.

Some few months before it was taken, a reporter posing as a businessman had secretly taped Sarah Ferguson's demand for five hundred thousand pounds in return for access to the prince.

"If you want to meet him in your business," she'd said then, "look after me, and he'll look after you. You'll get it back tenfold."

"Once again," she said afterward, "my errors have compounded and rebounded and also impacted on the man I admire most in the world: the Duke."

Prince Andrew had had his troubles already—with shady real estate deals, sticky romances, highly embarrassing document dumps (courtesy of Julian Assange and WikiLeaks), and questionable ties to Tunisian oligarchs, corrupt presidents of former Soviet republics, and Mu'ammar Gadhafi, among other entanglements, many of which were explored in a *Vanity Fair* article headlined THE TROUBLE WITH ANDREW.

"The duke has a record of being loyal to his friends," a "royal source" told *Vanity Fair*'s Edward Klein. "Take his feelings for Sarah Ferguson. If you are a prince and you bring a woman into the royal life and, for whatever reasons, she's spit out, you might have feelings of debt toward her. The duke feels that she's been spattered and rejected. His close relationship with the Duchess of York is problematic, and there have been many problems over the last 5 to 10 years, all of which stem from the duchess. Some of the behavior of the duchess is inconsistent with being married to, or an ex-wife of, the duke. There's no question but that Sarah's been a financially self-destructive element in the duke's life."

"The same kind of loyalty manifested itself last December, when the duke visited Epstein at his home in New York," said a spokesperson for Buckingham Palace. "Epstein was a friend of the duke's for the best part of 20 years. It was the first time in four years that he'd seen Epstein. He now recognizes that the meeting in December was unwise."

"Don't expect to see a photo of the two of them together," another "royal source" would say.

But one more story about the prince's dealings with Jeffrey Epstein had already emerged.

At a dinner party at Epstein's town house, the prince dished about the wedding of his nephew Prince William to Kate Middleton.

"He was amused that his dinner companions were so interested in every detail," a g
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ested in every detail," a guest in attendance told a *New York Post* gossip columnist. "What would Kate wear, what would the Queen wear, would his ex-wife Sarah Ferguson be invited?"

Other guests in attendance that night included Chelsea Handler, George Stephanopoulos, Charlie Rose, Katie Couric, and Woody Allen.

At around the same time, Jeffrey Epstein told the *New York Post,* "I'm not a sexual predator, I'm an 'offender.' It's the difference between a murderer and a person who steals a bagel."

Was it so remarkable that Prince Andrew would have been seen in Epstein's company? Andrew's philandering had been tabloid fodder for years. Randy Andy, they called him in the UK. And in the circles that Jeffrey Epstein moved in, philandering wasn't seen as a vice. Epstein came of age just as industrywide deregulation took hold on Wall Street. Junk bonds were king. Call girls were charging ten thousand dollars a night. And in the shadows, you'd see things that would have made Caligula blush. Sights that would make Nero himself reach for the nearest fire extinguisher. When the urge presented itself, the new super rich didn't have to swap wives.

They could simply swap harems.

By the same token, was it so very strange to think that a man like the prince would have grown so detached from reality—insofar as *reality* is even a word that applies to a prince? Was it odd that he thought it was absolutely fine to be seen by photographers strolling through Central Park with a registered sex offender—when at the time large swaths of the financial, banking, and trading industries were characterized by their very detachment from day-to-day concerns such as morality, ethics, and appearances?

As for Jeffrey Epstein, one question that might be worth asking is, if he's in fact a narcissist and megalomaniac, could he actually believe that he's *innocent?* Then again, that might be the wrong question. Epstein did plead guilty, after all. But what if he simply doesn't see what he pleaded to as a crime? What if he's *proud* of his lifestyle? And if that's the case, why *wouldn't* Prince Andrew be proud to be seen in public with his dear friend Jeffrey Epstein?

What if, for people like Epstein and the prince, it's just servants and masters, the way of the world? They're natural winners—*aristocrats,* after all—and if life were fair, well, how would we know who the real winners are?

Anna Salter: Novemb

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CHAPTER 59

Anna Salter: November 2015

Why do powerful men do the things that Jeffrey Epstein and Prince Andrew have been accused of doing?

Dr. Anna Salter studies child sex offenders professionally. Educated at Harvard, with a graduate degree in clinical psychology, she spoke, with the benefit of hindsight, about Jeffrey Epstein and others like him from her office in Madison, Wisconsin.

"Consider a car," says Dr. Salter. "There's a motor, and there are brakes. We all have sexual impulses we don't think it would be a good idea to act on. Most of us have good control over our behavior. We have good brakes.

"Sexual offenses and inappropriate sexual behavior are sometimes the result of a bad motor—for example, an attraction to prepubescent children or eleven-to-fourteen-year-old pubescent children as opposed to postpubescent individuals. But they are always the result of bad brakes.

"Antisocial psychopaths don't have brakes at all."

Dr. Salter has never met Epstein, but she's followed his case closely and finds him a familiar type. She's especially struck by the singular nature of the relationship between powerful, wealthy men and vulnerable, underage women.

"[The men] are more impressive to a fourteen-year-old [girl] than to, say, an adult young woman who is self-supporting and feels more sure of herself," she explains.

"They are attracted to what they call freshness—barely budding sexuality and lack of sexual experience. The difference between them and their victims feeds their ego.

"Great wealth and access are generally factors that make men feel they are entitled to whomever and whatever they want. Some have narcissistic personalities with inflated self-images. And of course, great wealth and status make such men think they can get away with it. Too often, they're right."

On the other hand, Dr. Salter believes that certain conditions, such as the ones exhibited by Jeffrey Epstein, might be an inborn character trait.

Personality can be influenced, sometimes quite heavily, by genetics.

"Virtually no one believes anymore that humans are born a totally blank slate," she explains.

"We arrive with temperamental and personality variations that, of course, the environment can often, but not always, influence. We arrive with baggage."

Is Epstein a born psychopath, then?

"*Psychopathy* is the umbrella term for individuals who do not have a conscience. Pyschopaths are often narcissistic, but narcissists are often not psychopathic. Some individuals who prey

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on young girls delude themselves into thinking that the abuse will not harm the child. They have a conscience, but they have medicated it with thinking errors. Others are flat-out psychopathic and simply don't care if it hurts the young girl or not. I can't say anything about Epstein, as I have not evaluated him, but narcissism and psychopathy are concepts an evaluator would look at concerning anyone who was sexually attracted to postpubescent individuals but who then began to focus on younger teens.

"Psychopaths are often superficially charming, high-stimulus seekers who are bored if not doing something. They lie, con, and manipulate. They do not establish deep affective ties.

"They are callous and remorseless individuals who simply don't feel bad about harming someone.

"Rules don't apply to them because they are exceptional. They are sure they won't get caught."

CHAPTER 60

Jeffrey Epstein: July 2010

Jeffrey Epstein was done with jail, but he wasn't done settling suits brought by his victims. Under the conditions of his non-prosecution agreement, he's even paid for the victims' lawyers. Still, Epstein's NPA seemed to ensure that he would not be prosecuted again for his crimes. Double jeopardy was working in Epstein's favor. But in July of 2010, reports began to appear in the press: federal investigators were following other leads—leads that could result in child-trafficking charges and a twenty-year sentence.

The Florida attorney general's office refused to comment. It was against policy to confirm or deny the existence of an ongoing investigation. One of Epstein's lawyers told the *Daily Beast* that he had no knowledge of such an investigation. "Jeffrey Epstein has fully complied with all state and federal requirements that arise from the prior proceedings in Palm Beach," Jack

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CHAPTER 60

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Goldberger said. "There are no pending civil lawsuits. There are not and should not be any pending investigations, given Mr. Epstein's complete fulfillment of all the terms of his non-prosecution agreement with the federal government."

If there was an investigation, nothing had come of it yet. For the moment, Epstein was free—free to turn his attention, again, to intellectual pursuits. He launched a website, JeffreyEpstein-Science.com, that featured blog posts such as "Conversations with Jeffrey Epstein," "The Value of Quantum Computation to Jeffrey Epstein," "Why Evolutionary Biology Intrigues Jeffrey Epstein," and "An Understanding of Theoretical Physics from Jeffrey Epstein." The latter post began: "This is where Jeffrey Epstein takes you to the very cutting edge of the frontiers of knowledge to explore and discuss our basic understanding of the subtle, simple, and hidden [qualities] that lie beneath... our universe."

"Jeffrey doesn't know shit about science," says Stuart Pivar, the art collector who has known Epstein for more than three decades. "Does he like to act like he does? Yes. But he doesn't. But as far as these academic scientists—without people like him they wouldn't have any money."

Other friends of Epstein's say that he truly did have a brilliant mind for science. And in any case, Epstein had done more than sponsor individual scientists. He'd also sponsored conferences on Little Saint Jeff's. On his website, he announced a conference called Mindshift at which Nobel laureates, such as the theoretical physicist Murray Gell-Mann, would mix with surgeons, engineers, and futurists and where professors would discuss cognitive neuroscience, artificial intelligence, systems of encryption and decryption, and other topics.

Epstein had been hosting get-togethers like this for years. Toward the end of Chief Reiter's investigation, in March of 2006, Epstein had hosted twenty top physicists—including three Nobel Prize winners as well as the celebrity physicist Stephen Hawking—at a Saint Thomas symposium called "Confronting Gravity," which was advertised as "a workshop to explore fundamental questions in physics and cosmology."

"This is a remarkable group," one of the Nobel Prize winners told a reporter for the *St. Thomas Source.*

"There is no agenda except fun and physics, and that's fun with a capital F," Epstein said.

Epstein had been especially interested in Stephen Hawking. Someday, Hawking had theorized, the universe would stop expanding and collapse, at which point time would begin to run backwards. Hawking believed that computer viruses were living things. He thought that given the size of the universe, alien life forms existed. He did not believe in God. But he had a vast appreciation for the inner workings of the universe, and this is why Epstein gave Hawking a tremendous gift. He paid to have a submarine modified so that it could fit Hawking and his wheelchair and give the scientist his first glimpse of an actual alien world—the one that lies under the waves of the ocean.

It was one of the most romantic, generous gestures that Jeffrey Epstein had ever made.

Al Seckel: January 201

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CHAPTER 61

Al Seckel: January 2012

Epstein's partner in the Mindshift conference, a man named Al Seckel, was known for throwing fabulous parties that were said to have included the actor Dudley Moore, magician James "the Amazing" Randi, and future Tesla and SpaceX founder Elon Musk, as well as many of the scientists Jeffrey Epstein would court in the course of his own climb up the social ladder.

In certain Los Angeles circles, Al Seckel was a very good man to know. But, like Jeffrey Epstein, Seckel was a sort of illusionist. According to Mark Oppenheimer, a journalist who knew Seckel and followed his career for fifteen years, Seckel made his money by selling rare books and papers, often through his social and academic connections.

"A number of these transactions resulted in accusations and lawsuits," Oppenheimer would write. "In speaking to former

Seckel acquaintances, I kept hearing variations on a scheme Mrs. Pearce Williams believed he perpetrated against her late husband, the man Seckel said was his mentor. Seckel took books and promised money, or he took money and promised a book; but somehow, the promised party lost money."

"He was charming, erudite, humorous," one of Seckel's marks told the reporter. "I lent him $75,000. When the time came to pay it back he didn't want to do it."

Oppenheimer found several people whom Seckel had stiffed and uncovered dozens of lawsuits he'd been involved in. In 2007, Seckel settled a libel lawsuit against a man who'd edited his *Wikipedia* page. Years later, Oppenheimer spoke with Seckel's lawyer, Nicholas Hornberger.

"Hornberger confirmed that he'd reached a settlement for the case, a favorable one," the journalist wrote. "Hornberger added that Seckel has still not paid him for his services."

He also interviewed Seckel's wife, Isabel Maxwell.

Al and Isabel met on a blind date and married in Malibu in or "around" 2007 ("I don't keep the dates in my head," Seckel explained). A few years later, they moved to the South of France, where Seckel continued to trade in rare books and papers. While living in France, he was sued by a Virgin Islands company that accused him and Isabel of fraudulently attempting to sell rare books and a seventeenth-century portrait of Isaac Newton.

Seckel had also been trying to sell papers belonging to Isabel's father.

Isabel is Ghislaine Maxwell's sister and the daughter of Robert Maxwell.

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It was an odd thing, Epstein's association with this self-professed PhD who, on closer inspection, turned out to be a bit of a grifter. But the Mindshift conference that Epstein and Seckel hosted in the Virgin Islands did take place, in 2010. Murray Gell-Mann was there, along with Leonard Mlodinow, a physicist who coauthored books with Stephen Hawking. Gerald Sussman, an expert on artificial intelligence who taught at MIT and also attended the conference, said that he didn't remember too much about it.

"We had scientific discussions, talked about various things," he said vaguely.

When Mark Oppenheimer asked him if he'd given money to Seckel, Sussman "got testy" with the reporter.

"I have had some dealings with him," Sussman said. "I don't want to say what it's about, because I don't feel good about it, okay?"

Today, Epstein's websites—JeffreyEpsteinFoundation.com and JeffreyEpsteinScience.com—are down. Their domain names have long since expired. Several recipients of Epstein's charitable contributions, including New York's Mount Sinai Hospital and Ballet Palm Beach, announced that they would not be accepting new gifts.

"The further I can keep myself from anything like that the better," said Ballet Palm Beach founder Colleen Smith.

But in 2012, Epstein held one more conference on Little Saint Jeff's. Once again, three Nobel Prize winners were in attendance. Stephen Hawking was also there. All in all, Epstein had gathered twenty-one physicists—from Princeton, Harvard, MIT, and CERN (the European Organization for Nuclear Research)—to "determine what the consensus is, if any, for defining gravity."

According to a press release issued by Epstein's foundation, the consensus that did emerge was that space is "not quite empty."

Jeffrey Epstein: Februar

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CHAPTER 62

Jeffrey Epstein: February 2, 2011

It's Groundhog Day, and once-reclusive Jeffrey Epstein is hitting the peak of his fame in a ripped-from-the-headlines episode of *Law & Order: SVU* that tracks, eerily well, with his own legal history.

The setup for this episode is the rape of a very young French girl. One who's been flown to New York on a very rich man's private jet, then flown back — coach class — to Paris.

On the plane, she has a freak-out. She thinks the middle-aged guy sitting next to her is trying to rape her. In Paris, the local police get involved.

"It was just a birthday party," the tearful girl tells the SVU cops via videoconference from France. "We were his present."

The cops ask: Whose present?

"The billionaire. The one who owns the jet."

Does the French girl know his name?

"Jordan. He wanted a massage. But I had to take off my clothes. He climbed on top of me. It hurt. I started to bleed, and it wouldn't stop. The doctor came."

"Dominique," the cops say. "We're going to arrest this man. But we need you to return to New York so you can testify."

"Non," says the girl. *"Non! Jamais! Jamais!"*

For Epstein, there are other embarrassments, many of which have to do with his royal friends. The wedding of Prince William and Kate Middleton is approaching, and the ongoing troubles of Prince William's uncle Prince Andrew keep threatening to derail the festivities. On March 6, a spokesperson for Sarah Ferguson confirms that Epstein paid off part of the seventy-eight thousand pounds that the duchess borrowed from a man who was once her personal assistant.

The next day, headlines appear in the *Telegraph* and other British papers: DUKE OF YORK "APPEALED TO JEFFREY EPSTEIN TO HELP DUCHESS PAY DEBT."

"I personally, on behalf of myself, deeply regret that Jeffrey Epstein became involved in any way with me," Prince Andrew's ex-wife tells journalists. "I abhor paedophilia and any sexual abuse of children and know that this was a gigantic error of judgment on my behalf.

"I am just so contrite I cannot say. Whenever I can I will repay the money and will have nothing ever to do with Jeffrey Epstein ever again."

That week, as part of the ongoing civil lawsuits against Epstein, Sarah Kellen and Nadia Marcinkova are both asked about Prince Andrew's relations with Epstein.

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Nadia Marcinkova are both asked
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"Would you agree with me that Prince Andrew and Jeffrey Epstein used to share underaged girls for sexual relations?" Kellen is asked.

"On the instructions of my lawyer," Kellen replies, "I must invoke my Fifth Amendment privilege."

"Have you ever been made to perform sexually on Prince Andrew?" lawyers ask Marcinkova.

"Fifth" is Nadia's simple, succinct reply.

That same week, the government downgrades Prince Andrew's role as Great Britain's royal trade envoy. But the British press is tenacious, and in the *Telegraph*, the *Guardian*, and elsewhere, stories appear on a daily basis:

- *The Duke, His Paedophile Guest, and the Most Unusual Use of an RAF Base*
- *Andrew's Secret Love Life Revealed*
- *Royal Connections: Prince Andrew and the Paedophile Are Suddenly the Talk of New York*
- *Time to Show This Right Royal Clown the Door*
- *An Odd Trio: The Royal Trade Envoy, the Teenage Masseuse and the Fixer*
- *No. 10 Struggles to Contain Row Over Prince*
- *From Royal Asset to National Liability*
- *Royal Blush*
- *Duke Could Be Called to Two Epstein Trials*
- *It's the Company You Keep... The Duke's Dangerous Liaisons*
- *Nothing Grand About This Old Duke of York*
- *The Royal Family Has Feared a Blow-Up Over Duke's Choice of Friends For Years*
- *Our Less-Than-Grand Old Duke of York*

On March 11, a devastating undersea earthquake and tsunami move Japan's main island by several feet, shifting the earth on its axis. The destruction is horrific and unprecedented. But on March 13, the *Daily Mail* devotes four pages and seven separate articles to Prince Andrew. That same day, the *Telegraph* runs three pieces, and the *Sunday Times* runs a two-page spread headlined GUN SMUGGLER BOASTS OF SWAY OVER ANDREW.

On March 14, the *Guardian* runs one more piece about Andrew's troubles.

PRINCE ANDREW DOMINATES HEADLINES DESPITE THE EARTHQUAKE, the headline reads.

Alan Dershowitz: Septen

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EADLINES DESPITE THE EARTHQUAKE,

CHAPTER 63

Alan Dershowitz: September 2014

If the ongoing lawsuits are costing Epstein millions, he has millions left to spare. Meanwhile, the FBI's investigation into whether Epstein trafficked underage women across state lines seems to be going nowhere. As 2014 draws to a close, it's beginning to look as if Epstein is finally free and clear of the case.

But for Epstein's friend and sometime lawyer Alan Dershowitz, things are about to get very unpleasant.

At the start of 2008, Bradley Edwards, the Fort Lauderdale lawyer, had filed a motion in a West Palm Beach court on behalf of two unnamed women accusing Prince Andrew and Alan Dershowitz of participating directly in Epstein's illegal activities.

Prince Andrew had had no comment to make, and Dershowitz had objected to the accusations in the strongest possible terms.

"There's absolutely no kernel of truth to this story," he'd said.

“I don’t know this woman. I’ve never been in the same place with her. She’s made the whole story up out of whole cloth.”

Bradley Edwards had already become involved in lawsuits against Epstein. In 2007, working with a former federal judge and University of Utah law professor named Paul Cassell, he had filed a lawsuit on behalf of another unnamed woman. Six years later, that case is still pending, and now, Edwards and Cassell petition to have the two suits combined.

All in all, four Jane Does take part in the lawsuit.

Jane Doe 3 is Virginia Roberts, the girl who says that Ghislaine Maxwell recruited her for Epstein at Trump’s resort, Mar-a-Lago.

Epstein had “lent” her and other young girls to prominent businessmen, important politicians, world leaders, and other powerful men in order “to ingratiate himself with them for business, personal, political, and financial gain, as well as to obtain blackmail information,” Roberts claims.

She says that Epstein forced her and other underage girls to take part in an orgy in the Virgin Islands.

She names Prince Andrew and Alan Dershowitz as two of the men she’d been forced to have sex with and claims that Dershowitz had been “an eyewitness to the sexual abuse of many other minors by Epstein and several of Epstein’s co-conspirators.”

This time, Prince Andrew does respond to the allegations.

“This relates to longstanding and ongoing civil proceedings in the United States, to which the Duke of York is not a party,” Buckingham Palace says in a short statement. “As such we would not comment on the detail. However, for the avoidance of doubt, any suggestion of impropriety with underage minors is categorically untrue.”

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Alan Dershowitz also goes on the attack. Virginia's claims are part of a plot to extort him, he claims. The motion that Edwards and Cassell have filed is "the sleaziest legal document" he's ever seen.

"They manipulated a young, suggestible woman who was interested in money," Dershowitz says. "This is a disbarrable offense, and they will be disbarred. They will rue the day they ever made this false charge against me." It's a vehement denial. But then, the allegations made by Virginia Roberts, on January 15, 2015, in a declaration filed against the government in an attempt to overturn Jeffrey Epstein's non-prosecution agreement, are highly disturbing.

CHAPTER 64

Declaration of Virginia Roberts Giuffre, filed on January 19, 2015 by attorneys representing Jeffrey Epstein's victims (continued)

20. Harvard law professor Alan Dershowitz was around Epstein frequently. Dershowitz was so comfortable with the sex [that] was going on that on one occasion he observed me in sexual activity with Epstein.

21. I had sexual intercourse with Dershowitz at least six times. The first time was when I was about 16, early on in my servitude to Epstein, and it continued until I was 19.

22. The first time we had sex took place in New York in Epstein's home. It was in Epstein's room (not the massage room). I was approximately sixteen years old at the time. I called Dershowitz "Alan." I knew he was a famous professor.

23. The second time that I had sex with Dershowitz was at Epstein's house in Palm Beach.

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Beach.

24. I also had sex with Dershowitz at Epstein's Zorro Ranch in New Mexico in the massage room off of the indoor pool area, which was still being painted.

25. We also had sex at Little Saint James Island in the U.S. Virgin Islands.

26. Another sexual encounter between me and Dershowitz happened on Epstein's airplane. Another girl was present on the plane with us.

27. I have recently seen Alan Dershowitz on television calling me a "liar." He is lying by denying that he had sex with me. The man I've seen on television, described as a former law professor, is the same man that I had sex with at least six times. Dershowitz also knows that Epstein had sex with other underage girls and lent me out to other people, but he is lying and denying that. . . .

28. After years of abuse and being lent out, I began to look for a way to escape. I had first gone into Epstein's household because I wanted to be a massage therapist. Epstein had taken me into his clutches through promises and talk and for some time I believed him. But once he had me under his control, regardless of my doubts and fears, I felt trapped.

29. I kept asking Epstein for my promised training and education. Epstein finally got me a plane ticket to Thailand to go to Chiang Mai to learn Thai massage. This sounded like my chance to escape. In September 2002, I packed my bags for good. I knew this would be my only opportunity to break away.

30. On September 27, 2002, I flew from JFK in New York to Chiang Mai, Thailand. I arrived around September 29 for my training. But Epstein was going to get something out of *this trip as well. I was supposed to interview a girl and bring her back to the United States for Epstein.*

31. [Left blank in the original]

32. *I did the massage training in Chiang Mai. While I was there, I met a great and special guy and told him honestly what I was being forced to do. He told me I should get out of it. I told him that the people I was working for were very powerful and that I could not walk away or disobey them without risking serious punishment, including my life. He told me he would protect me. I had confidence [in] him and I saw his love and help as my opportunity to escape and to be with someone who truly loved me and would protect me. I married him and flew to Australia.*

33. *I called Epstein and told him I was not coming back. He asked why? I said "I've fallen in love." Epstein basically said "good luck and have a good life." I could tell he was not happy. I was afraid of what he was going to do to me. I thought he or one of his powerful friends might send someone to hurt me or have me killed.*

34. *From that point onward, out of concern for my safety and general well-being, I stayed in Australia with my husband. I was in Australia from late 2002 to October 2013. To be clear, I was never in the United States during these years, not even for a short trip to visit my mother. And my absence from the United States was not voluntary—I was hiding from Epstein out of fear of what he would do to me if I returned to the United States.*

35. *In around 2007, after not hearing from anyone for years, out of the blue I was contacted by someone who identified himself with a plain sounding name and claimed he was*

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with the FBI. It seemed very odd for someone doing an official criminal investigation to just call up on the phone like that. I hadn't heard Epstein's name for years. I didn't know who this person was and what it was really about. I couldn't tell what was going on.

36. This man said he was looking into Jeffrey Epstein. The man asked if I had been involved with Epstein. My first instinct was to say nothing because I wasn't sure he was really with the FBI or any authorities. I answered a few basic questions, telling him that I knew Jeffrey Epstein and had met him at a young age. But the conversation didn't feel right. This man never offered to come and meet with me in person. Instead, he asked me right off the bat about Epstein's sexual practices. I thought it would be strange for a true law enforcement officer to behave that way, so I became increasingly uncomfortable and suspicious about who was actually calling me.

37. I told the man nothing more about Epstein. The conversation probably didn't even last three minutes, but it immediately triggered all of the fears of Epstein and his powerful friends that had caused me to escape in the first place. If the call accomplished anything, it only put me back in a state of fear and told me that I could be found quite easily and had nobody officially protecting me.

38. I suspected that the man who called me was working for Epstein or one of Epstein's powerful friends. I believed that if this was really an agent who was investigating Epstein, he would have known who I was and how I fit into Epstein's sexual crimes in many different places. He would have interviewed me in a way that would have established his credentials *and would have shown how he could provide potential protection from Epstein. That never happened.*

39. Getting a call from this supposed FBI agent made me scared all over again. I had left the old life of sexual slavery behind me and started a new life in a new country in hopes that the powerful people whose illegal activities I knew all about would never find me.

40. Shortly after this purported FBI call, I was contacted by telephone by someone who appeared clearly to be working for Epstein. The caller told me about an investigation into Epstein and said that some of the girls being questioned were saying that Epstein had had sexual contact with them. After they made these allegations, the man said they were being discredited as drug addicts and prostitutes, but in my case, if I were to keep quiet, I would "be looked after." The fact that this call was made shortly after the supposed FBI call reinfor[c]ed my concern that the man I had talked to earlier was not really working for the FBI but for Epstein. I didn't think that the FBI and Epstein would both be working together and would both get my phone number at almost exactly the same time. I played along and told this person that I had gotten a call from the "FBI" but that I didn't tell him anything. The person on the phone was pleased to hear [that].

41. A short time later, one of Epstein's lawyers (not Alan Dershowitz) called me, and then got Epstein on the line at the same time. Epstein and his lawyer basically asked again if I was going to say anything. The clear implication was that I should not. The way they were talking to me, I was afraid of what would happen if I didn't keep quiet. My thought was

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> *that if I didn't say what they wanted me to say, or not to say, I might get hurt.*
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> *42. I promised Epstein and his lawyer that I would keep quiet. They seemed happy with that and that seemed to me to [be the] way to keep me and my family safe. And I did what Epstein and his lawyer told me. I kept quiet.*

This declaration, stricken from the record by the judge in the victims' lawsuit against the government, also set in motion events that led to Dershowitz's and Roberts's lawyers becoming involved in spectacular lawsuits, which included a complaint by Dershowitz that these allegations were false and had defamed him, and a complaint by Edwards that Dershowitz's accusations against him were false and defamatory.

CHAPTER 65

Alan Dershowitz: October 2015

About fifteen minutes into the ripped-from-the-headlines episode of *Law & Order: SVU* that was inspired by the Jeffrey Epstein saga, the plot takes an interesting turn: before officers have a chance to arrest him, Jordan, the character modeled on Epstein, shows up at SVU headquarters.

The twelve-year-old French girl raped *him*, Jordan says.

Wearing a monogrammed fleece pullover like the ones favored by Jeffrey Epstein, he describes an evening at home.

"The party was in full swing," he explains. "A friend said she wanted to give me a *special* present. Told me to wait in my massage room—"

An SVU guy interrupts: "Guy has a massage room?"

"I suffer from chronic back pain," Jordan says.

"While I was waiting, I fell asleep. Now, at first I thought I must be dreaming. I was aroused. I felt myself being manually

manipulated. Then I reme
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CHAPTER 20

Jeffrey Epstein: 1953–1969

Jeffrey Epstein's mother, Paula, was the daughter of Max and Lena Stolofsky, who arrived in the United States as Lithuanian refugees. Relatives on that side of the family who remained in the old country would all perish in the course of Adolf Hitler's campaign to exterminate European Jewry.

Epstein's father, Seymour, was a manual laborer, like his father before him. Seymour's parents, Julius and Bessie Epstein, had emigrated from Russia and landed in Brooklyn, both of them with eighth-grade educations. They lived in Crown Heights, where Julius owned a house-wrecking company.

Before landing a job with the city, Seymour had worked with his father.

They were kind people, says Epstein's childhood friend Gary Grossberg. Seymour was there for him at a difficult time, Grossberg says. When Grossberg was young, his parents divorced, and his father moved out of Brooklyn. Seymour and Paula took Gary in. Often they referred to him as their third son. "Paula was a wonderful mother and homemaker," Grossberg remembers, "despite the fact that she had a full-time job."

Epstein, as a kid, was "chubby, with curly hair and a high, 'hee-hee' kind of laugh," Beverly Donatelli recalls.* Beverly was two years older than Epstein, but thanks to his precocious talents, which allowed him to skip two grades, they graduated from Brooklyn's Lafayette High School together, in 1969.

"He was *advanced*," Beverly remembers. "He tutored my girlfriend and myself in the summer. He taught me geometry in *just two months*."

When Beverly thinks of Epstein now, she recalls gentler times—long strolls down the Coney Island boardwalk, roller-coaster rides, stolen kisses. "That last year in school, I think he kind of loved me," she says. "One night on the beach he kissed me. In fact, our history teacher made up a mock wedding invitation for Jeffrey and myself to show to the class. That seems pretty inappropriate now. But back then, we all thought it was funny. Jews and the Italians, that was pretty much who went to Lafayette High School. They didn't socialize that much. And though my mother was crazy about him, she told me Jewish boys don't marry Italians."

Through the haze of several decades, Beverly remembers Epstein as a kindhearted boy and something of a prodigy—a gifted young pianist as well as a math whiz.

"I was talking to my girlfriends the other day," she says.

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* Beverly Donatelli's name, some identifying details, and dialogue have been changed.

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"There is nothing but nice we can say about him. He is actually the reason I went to college."

Beverly lost contact with Epstein over the years. But not long after Epstein's fiftieth birthday, she got a call out of the blue.

"He had a photo of us on the beach," she says. "A friend noticed it at his birthday party. And Jeffrey said to the friend: 'I bet she has a big ass now.' So Jeffrey called me and invited me to his home on 71st Street. We hung out. We reminisced. He was the same Jeffrey. A gentleman."

The two never did speak again, but to this day Beverly sympathizes with her high school sweetheart.

"I feel so bad for him," Beverly says. "That's how much I liked him."

Gary Grossberg was a year younger than Epstein and in the same class as Epstein's kid brother, Mark, with whom Grossberg remains very friendly, though he hasn't seen or spoken with Jeffrey in some time. Both brothers are good people, he says.

"Jeffrey's a brilliant and good person. He is also incredibly generous."

Grossberg says he's talked to Epstein about "the problem in Florida." As he sees it, Epstein "got carried away... perhaps he was hanging around with the wrong people."

Grossberg wonders, too, if the things that made Epstein special contributed to his eventual fall from grace.

"He was a diamond in the rough, you see," Grossberg explains. "People recognized Jeffrey's brilliance very early on. But he had a gift for recognizing opportunities very quickly. He started buying properties in Manhattan, including 301 East 66th Street. He asked his brother—did Mark want to join him? He did."

Grossberg himself has had his ups and downs. At one point, he worked in a building owned by the Epstein brothers. There, he says, a porter told him a story about a little-known side of Jeffrey Epstein. The porter's wife, who lived in South America, desperately needed an organ transplant. Epstein paid for the operation.

"That's just typical," Grossberg says. "That's who he always was, long as I knew him."

"Lafayette was a city school," says another old classmate, James Rosen. "It was functional. There was nothing special about it."

James Rosen is a retired postal worker. He lives in South Florida now, but, like Jeffrey Epstein, he'd grown up in Sea Gate.

"There was a lot of volatility at Lafayette," Rosen recalls. "It was a blue-collar area that was, at one time, 90 percent Italian. Then a small amount of Jews moved in, and there was anti-Semitism. The Italians didn't want the Jews to be there."

Black families were moving in, too, he remembers, and Hispanic ones. But he says most of the animosity was aimed at Jews.

"There were fights in the schools. They thought we were going to take over."

But Epstein seems to have made friends easily. Even then, his buddies—who called him Eppy—could see he was special. While they hung out on the beach, Epstein played the piano. Did homework. Worked on his prized stamp collection.

Innocent times.

Jeffrey Epstein: 19

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CHAPTER 21

Jeffrey Epstein: 1969–1976

It's the height of the Vietnam War. Students collide with college administrators. Hippies collide with hard hats. Kids with long hair collide with their parents. Jeffrey Epstein does not go in for any of that. At the age of sixteen, he's taking advanced math classes at Cooper Union, an august institution in the East Village where Abraham Lincoln once spoke.

Thanks to a generous endowment, the school is tuition-free, though the application process is famously rigorous.

Epstein sails through it.

At Harvard or Yale, his accent would give him away. Epstein *tawks* like the Brooklyn boy he is. But Cooper Union is more open than any Ivy League school. It's full of boys from Brooklyn, and, aside from his prodigious intellect, Epstein doesn't stand out. He starts to make money by tutoring his fellow students. And in 1971, he leaves Cooper Union for the greener pastures of New York

University, located a few blocks away. There, at the Courant Institute of Mathematical Sciences, he studies the mathematical physiology of the heart. But he never graduates from any college or university.

By 1973, Epstein is teaching at the Dalton School, a prestigious private school on the Upper East Side. Like Tavern on the Green, Grand Central Terminal, and the Century Association, Dalton is a New York institution—an elite K–12 rocket ship built for the children of New York's ruling classes.

It's not at all clear how Epstein, who has no college degree, ends up there.

And yet here he is, barely out of his teens and already a teacher of math and physics. "Go forth unafraid" is the Dalton School's credo.

It's a philosophy Epstein has adopted. For him, Dalton's an excellent launching pad.

It's nothing like Lafayette High School. The kids he's teaching are rich—very rich. Their parents are extremely well connected. And despite Epstein's outer-borough accent, he's careful in his presentation. At any given moment, he's one parent-teacher conference away from a whole new world of possibilities.

Because Dalton has an excellent student-to-teacher ratio, the parents get to know Epstein quite well. Before long, a Wall Street *macher* named Alan "Ace" Greenberg has taken a special shine to the young man who's been tutoring his son Ted.

Like Epstein, Ace Greenberg came from a humble background.

The son of an Oklahoma City shopkeeper, he won a football scholarship to the University of Oklahoma, transferred to the

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University of Missouri following a back injury, and graduated in 1949. That same year, he moved to New York and, after a series of rejections at white-shoe firms—places that never would hire a Jew—landed a job at Bear Stearns, earning $32.50 a week as a clerk.

By 1958, he'd been made a full partner. Built like a pit bull, Greenberg smoked cigars, performed coin tricks for his friends, and always dressed in a bow tie. He was an all-elbows trader—gruff, cheap, and, above all, impatient. He was also a champion bridge player, a hunter of big game in Africa, and the firm but loyal leader of the team he'd built at Bear Stearns—an unusual team made up mostly of men who'd grown up in New York's outer boroughs.

Greenberg didn't care about MBAs or Ivy League diplomas. What he cared about was raw talent and drive. Greenberg cultivated risk takers, unconventional thinkers, and he looked high (and especially low) for his "PSDs": men who, in his estimation, were poor, smart, and, above all, determined.

Jeffrey Epstein, the Dalton School teacher, fit Greenberg's bill perfectly.

CHAPTER 22

Jeffrey Epstein: 1976–1981

According to several published reports, it was Ace Greenberg's son, Ted, who introduced Epstein to Greenberg. But other sources say Greenberg's daughter, Lynne, was dating Epstein at the time. According to them, *that* was how Epstein got into Bear Stearns—by charming a young and beautiful woman and using her to advance his career.

At Bear Stearns, Epstein started as an assistant to a trader on the American Stock Exchange and quickly worked up to junior partner, which meant that he was entitled to a share of the profits. Still in his twenties, he was running with the bulls, kicking down any doors that stood in his way.

The view from Ace Greenberg's office, high above Madison Avenue in midtown, was striking. At night, the whole city was lit up like a stage set.

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CHAPTER 22

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women to go with the prize. Tall, beautiful women, blondes and brunettes, who wouldn't have given a math teacher the time of day. Now they found Epstein exciting and *handsome*.

Greenberg's gorgeous assistant was one of these women.

If Greenberg knew about their affair, he did not seem to care. Then again, Greenberg had other things on his mind. The Reagan era, when deregulation kicked into high gear, was still on the horizon. But there was already a decreasing amount of government oversight on Wall Street, and a new breed of bare-knuckle traders had begun to push every available limit. It was the start of the age of corporate raiders, and with Ace Greenberg looking out for him, Epstein had no reservations when it came to throwing his weight around. The golden boy's gift for working the numbers earned him a place in the special-products division, where he worked on extremely complex tax-related problems for a select group of Bear Stearns's wealthiest clients—an elite within the elite—including Seagram CEO Edgar Bronfman.

In the spring of 1981 Bronfman made a bid to take over the St. Joe Minerals Corporation. He offered forty-five dollars a share, or close to three times the value of St. Joe's stock. The whole offer amounted to $2.1 billion in cash.

But St. Joe's executives didn't want to sell their 118-year-old company. In a press release, they called Seagram's bid unsolicited and dismissed it as "grossly inadequate." At which point the SEC decided to investigate.

There were allegations of insider trading. Within a few weeks, Bear Stearns's employees were called in to testify.

Epstein got called in as well and categorically denied any wrongdoing.

But, as it turned out, he'd just resigned from Bear Stearns.

CHAPTER 23

Jeffrey Epstein: 1981

Epstein will always maintain that his resignation had nothing to do with the SEC's investigation into Bear Stearns and Edgar Bronfman's ill-fated attempt to take over St. Joe's.

But of course this raises the question: Why *did* Epstein resign from Bear Stearns?

In his testimony before the SEC, Epstein says he was offended by the company's investigation of a twenty-thousand-dollar loan he'd made to his friend Warren Eisenstein. Epstein didn't know it at the time, he maintains, but if used to buy stock, such a loan might have been unethical, if not illegal.

On top of that, questions about Epstein's expenses had come up.

In the end, Bear Stearns fined him $2,500—an embarrassing thing, to be sure. So much for making full partner anytime soon.

But $2,500 is not $250,000 or even $25,000. Who'd give up a job as junior partner over that?

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CHAPTER 23

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Another one of Epstein's bosses, James "Jimmy" Cayne, will say, "Jeffrey Epstein left Bear of his own volition." Epstein wanted to strike out on his own, Cayne explains. But given the timing, some questions remain. Then there's Epstein's own testimony, given on April 1, 1981, before SEC investigators Jonathan Harris and Robert Blackburn:

Q: Sir, are you aware that certain rumors may have been circulating around your firm in connection with your reasons for leaving the firm?
A: I'm aware that there were many rumors.
Q: What rumors have you heard?
A: Nothing to do with St. Joe.
Q: Can you relate what you heard?
A: It was having to do with an illicit affair with a secretary.

As far as the investigators are concerned, this is new information; the first time a secretary's name has come up. But they have no interest in Epstein's office romance and press on:

Q: Mr. Epstein, did anyone at Bear Stearns tell you in words or substance that you should not divulge anything about St. Joe Minerals to the staff of the Securities and Exchange Commission? Has anyone indicated to you in any way, either directly or indirectly, in words or substance, that your compensation for this past year or any future monies coming to you from Bear Stearns will be contingent upon your not divulging information to the Securities and Exchange Commission?
A: No.

* * *

Whatever the reasons for his resignation, Epstein still gets his annual bonus of around $100,000 (roughly $275,000 in today's dollars). The SEC never brings charges against him or any other Bear Stearns employee. And so the particulars of Epstein's departure get folded up into the greater mystery surrounding the man. Did Epstein crash the rocket ship that Ace Greenberg had given him to pilot? Or did he take it and fly it out, over the horizon?

Either way, Epstein was out on his own.

For him, the future would only get brighter.

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CHAPTER 24

Ana Obregón: 1982

Ana Obregón was one of the world's most beautiful women and well on her way to becoming famous as such when she first met Jeffrey Epstein. For her, there would be film roles—in the 1984 Bo Derek vehicle *Bolero,* Ana Obregón gives the star a run for her money—and appearances on the covers of Spanish *Playboy* and Spanish *Vanity Fair.*

As for fortune, Obregón had that already.

Ana's father was a very wealthy investor in Spain. But he also had serious problems. On June 15, 1982, a venerable stock- and bond-trading firm, the Drysdale Securities Corporation, announced that it was going out of business. Just that year, Drysdale had spun off a subsidiary operation called Drysdale Government Securities. And in May, DGS defaulted on $160 million in interest payments it owed on Treasury securities that it had borrowed. In doing so, DGS had dragged down its parent company.

A very well-connected group of Spanish families—including members of Spain's royal family—had invested with Drysdale. Those investors stood to lose hundreds of millions of dollars. And Ana's father was one of those investors.

What Ana wanted from Jeffrey Epstein was help in recovering her father's money.

"My father, he's done something stupid," she told him.

A Spanish accent. A Brooklyn accent. They blended well together, and Ana was so very lovely.

It turned out that Epstein was willing to help.

"Something stupid, you see, with the money. The family money. Some—what do you call it? A scheme. He knew some of the people, but they lied to him. And now the money is gone."

People who knew Jeffrey Epstein recall that he was bad off after his exit or ouster—whatever it was—from Bear Stearns. Moving from couch to couch for a while. Sleeping in his lawyer's offices before settling down in an apartment in the Solow Tower, on East 66th Street.

It's a bit hard to believe. After all, Epstein left Bear Stearns with a good deal of money. But Epstein's lifestyle was expensive. He was a man on the make then, and Ana was still in her twenties, plying her craft at the Actors Studio—the New York City theater institution that Marlon Brando, Robert De Niro, Jack Nicholson, and Jane Fonda had all been members of.

Epstein told Ana that he'd formed a company, International Assets Group.

To Ana, this sounded very impressive. In fact, IAG was a small operation that Epstein was running out of his apartment.

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But if Ana had known that, would she have cared? She could already see that Epstein was brilliant. And though she would maintain that their friendship was strictly platonic, it was Ana who helped set Epstein on his course. Like other beautiful women he'd cultivate throughout his life, she opened doors to whole other kingdoms.

Ones that no boys from Brooklyn had even dreamed of.

Andrew Levander was an assistant US attorney in the Southern District of New York's Securities and Commodities Fraud Task Force. He was assigned to look into Drysdale's collapse. The case he was building would result in fraud convictions for a number of Drysdale executives, and even today, Levander remembers Epstein bringing "a very attractive woman" to meet him when Epstein came to him in the course of the investigation.

The woman was Ana Obregón.

Levander told Ana that he was already working the case. A lawyer named Robert Gold, who was a former federal prosecutor himself, was assisting. And now Epstein would join them in the hunt for the monies.

In effect, DGS had built a series of labyrinths, rabbit holes, deadfalls. And even investors who'd lost vast sums to the company were less than forthcoming when it came to speaking to the US attorney. Several of the investors were foreign. Some had violated their own countries' laws pertaining to foreign investments.

This was where Epstein—with his calm, confident air of discretion—came in.

Ana Obregón gave Epstein power of attorney over any monies that he recovered. And though it took him three years, working with Robert Gold and the US attorney's office, Epstein finally did make his way to the center of DGS's maze and recover Obregón's money.

Most of it was being held in a bank in the Cayman Islands.

Epstein's agreement with Ana prevents us from knowing how much he recovered—and how much he kept. But given the amounts at stake, Epstein likely earned millions—or more—and to this day Ana Obregón has nothing but appreciation for what Epstein accomplished.

"I know he's had some problems," she says. "I don't want anything to do with that."

As for Epstein, he came out of the deal with a new modus operandi: from now on, he'd only work with the super rich.

Eva Andersson:

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CHAPTER 25

Eva Andersson: July 8, 1980

Miss Sweden, Eva Birgitta Andersson, is wearing a dazzling white gown and sweating, ever so slightly, under the stage lights. But Bob Barker's about to announce the winner of this, the twenty-ninth Miss Universe pageant, held in Seoul, South Korea, and Eva's smile is as wide as the ocean.

"And now that we know what Miss Universe will win, let's see which five girls are still in the running!"

Barker pauses, like the expert broadcaster he is. Eva's chest tightens. There are twelve women on stage, all of them beautiful—even if they're not quite as beautiful as Miss Sweden.

"On this card are the names of five contestants who have received the highest total score from our judges in the personal interview, the swimsuit, and the evening gown competition."

Eva feels the camera pan across the stage—pan across *her*, standing in between Miss Scotland and Miss Puerto Rico.

"As a result, they will be our five finalists. As I call each name, you will see a figure on your television screen. That is the total score received by the contestant since she became a semifinalist. But one thing I would point out to you: the point total is not necessarily a sign of who our eventual winner will be. Being first now is no guarantee of being first at the time of our judges' final ballot."

Oh, get on with it, Miss Sweden thinks. And, as if by her command, Bob Barker does.

"Now our five finalists. Good luck, girls! The first finalist is: *Miss Sweden!*"

Eva's hands fly up to her face. The time it takes her to walk to the front of the stage is all the time she needs to stop herself from crying.

For Eva, it's not meant to be. Miss USA, Shawn Weatherly, wins that year's competition—she'll go on to become a star on *Baywatch*. But Eva's future is secure nonetheless. After the pageant, she'll spend three years studying in Stockholm, finish med school at UCLA, and become a doctor of internal medicine.

Along the way, she'll meet Jeffrey Epstein.

People who knew them when they were a couple say that Eva wanted to marry Epstein. One friend says he considered it seriously. In the end, Eva ended up with a man named Glenn Dubin, though she and Epstein remained very close. And if Eva was the proverbial "one who got away," Epstein ended up dating other impressive women—world-class beauties—as he made his way in the world.

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Why didn't any of the romances take? Perhaps there was always someone more fabulous waiting for Epstein around the corner. Perhaps none of these women satisfied Epstein's deeper urges. But he did have a knack for keeping the women he'd dated by his side through thick and thin, long after he'd broken up with them.

When he was through with his girlfriends, Epstein would say, they graduated up, not down, the ladder, moving from the status of "lover" to "friend."

In his estimation, these shifts always constituted a promotion.

The world was full of beautiful women. But for Epstein, friendship seemed to be a far more precious commodity.

CHAPTER 26

Jeffrey Epstein: 1984

How *did* Jeffrey Epstein make all his money?

Epstein would tell stories over the years about monies recovered from slippery characters. Sometimes, friends and former associates would say, he'd suggest he had ties to the government, giving listeners the impression that he was doing dangerous, glamorous work.

Others said that what Epstein *really* did, at this stage in his career, was much more banal. According to them, Epstein spent most of his time coming up with creative new ways for the rich to avoid paying taxes. The commission for tax-avoidance deals was enormous, although the number of deals Epstein was involved with is a matter of conjecture, as is his record of successes and failures.

But Epstein's business model was evolving. He'd charge a flat fee. No fancy math. No percentages.

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CHAPTER 26

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Pay me fifty million dollars. Or pay the IRS seven times that amount.

At first Epstein did not demand his fee up front. Instead he asked that the payment—often a substantial one—be put into escrow. If his strategy worked, he'd get paid. If not, the money bounced back to the client.

In the eighties, when tax rates on the top 1 percent were much, much higher than they are today, topping out at close to 50 percent, it was an extremely effective pitch. And then there were other ways to make money.

In 1982, Epstein sold his wealthy friends, his friends' wealthy relatives, and others on an oil-drilling deal. One of the investors, Michael Stroll, had run Williams Electronics, an entertainment company known for the pinball machines it made.

Stroll put $450,000 into the oil deal.

But in 1984, Michael Stroll wanted his money back. Despite repeated demands and requests for a full accounting of what Epstein owed him, he got $10,000 back on his $450,000 investment. Eventually he sued Epstein in federal court for the remaining $440,000—the case went on for a number of years. In court, Epstein told the judge that the $10,000 he'd returned was actually the payment for a horse Stroll had sold him.

Like many cases involving Epstein, this one was settled out of court, the terms of the final agreement kept secret.

CHAPTER 27

Steven Hoffenberg: July 10, 1987

Before there was Bernie Madoff, there was Steven Hoffenberg.

In 1987, Hoffenberg was the head of Towers Financial Corporation, a company that bought debts, such as unpaid medical bills, at a very steep discount while pressing the debtors to repay in full. He'd started the company fifteen years earlier with two thousand dollars and just a handful of employees. Thanks, in part, to a grueling work ethic, he'd turned that into a much bigger concern, with twelve hundred employees and stock that traded over the counter. But Hoffenberg still spent fifteen hours each day, six days a week, in his office.

He wanted more. Hoffenberg was a Wall Street outsider. A Brooklyn boy. A college dropout, like Epstein.

One thing Hoffenberg wanted was respect. The other was someone who was familiar with Wall Street's inner workings. Jeffrey Epstein, who had traded options for Bear Stearns, fit the bill.

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CHAPTER 27

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Hoffenberg began paying twenty-five thousand dollars per month for Epstein's expertise as a consultant.

The SEC had already looked into Hoffenberg's affairs, settling with him out of court in a matter relating to unregistered securities. But Hoffenberg was dangling a very big prize.

In the 1980s, several major financial players were involved in the greenmailing of publicly traded companies. What greenmailing means, in practice, is that a brokerage house or group of investors will start buying shares in companies that seem to be vulnerable to takeover attempts. To ward off the attempts, executives at those companies will buy the shares back at a premium. It's risky, but very often the investors stand to make a handsome profit.

Yet another thing Hoffenberg wanted was to take over Pan American World Airways. The iconic airline had already entered its downward trajectory, but it was still a giant.

For Hoffenberg, the greenmailing profits could have been huge.

According to Hoffenberg, Epstein handled the attempted takeover of Pan Am—a deal that went sideways almost immediately.

Steven Hoffenberg still has a lot to say on the subject. But in listening to him, one must bear in mind that in 1995, he pleaded guilty to criminal conspiracy and fraud charges involving a $460 million swindle, a familiar scheme to anyone who followed the Bernie Madoff case.

Like so many others, Hoffenberg had tried to fly very high without the necessary updraft. And despite all the hours he spent at the office, he'd also developed a taste for the high life. He bought his own jet, a luxury yacht, and a Long Island mansion to go with his expensive Manhattan apartment. He'd also briefly owned a controlling interest in the *New York Post*.

To cover his tracks, Hoffenberg had been taking money from investors and using it to pay previous investors. It was a classic Ponzi scheme—one of the biggest in history—and Hoffenberg ended up spending nineteen years in a federal prison.

Why was Epstein not implicated in the case? All that Hoffenberg will say when asked is: "Ask Robert Gold."

Another source suggests that Gold, the former federal prosecutor who had helped Epstein recover Ana Obregón's money, kept the US attorney away from Epstein until there were only a few weeks left before the statute of limitations ran out.

As for Epstein himself, he would always deny any wrongdoing. Despite his proximity to Hoffenberg, he managed to avoid the blast radius.

Robert Meister: 1985

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CHAPTER 28

Robert Meister: 1985

Robert Meister, the vice chairman of a giant insurance brokerage and consulting firm called Aon, met Jeffrey Epstein in the mid-eighties, aboard a flight from New York to Palm Beach. Both men were flying first class. Each one thought the other looked familiar. They talked in the course of that flight, and Meister filed the conversation away, only to recall it in 1989. At that time, Les Wexner, who was Meister's friend and a client of Meister's insurance company, was complaining to him about the people managing his money.

Wexner was a billionaire, but for all his wealth, his finances were in a tangle. Maybe Epstein could help. And perhaps Epstein would also be grateful for the introduction. Hard as it is to believe, there's evidence to suggest that Epstein really had spent the last of his last Bear Stearns bonus—along with his share of the money he'd recovered for Ana Obregón—and was broke, again, at the time.

One estranged friend says that he had to loan Epstein money to pay the bill at Epstein's garage, which had seized Epstein's car for nonpayment.

Another estranged friend says that Epstein didn't have two nickels to rub together.

Diana Crane, a former model, says that Epstein always had first-class upgrades he would give to his friends so they didn't have to fly economy class.

"No one knew where or how he got them," Crane recalls. "Sometimes they worked, and other times they didn't. I remember he saw a friend of mine wearing a Concorde jacket. He asked if he could borrow it for a day or so. My friend never got the jacket back. But Epstein would tell people he always flew on the Concorde—a *total* lie."

But even if Epstein were flush, Les Wexner would have been a big fish to catch.

From the get-go, Meister's wife, Wendy, had her suspicions about Epstein. About the way he presented himself and the way he worked himself into their inner circle.

Before long, Wendy was calling Epstein *the virus*.

But for Epstein, the Meisters weren't the point. Wexner was.

And hard as it is to understand why the billionaire would associate with a man who'd worked with a Ponzi king like Steven Hoffenberg, it turned out that Wexner and Epstein would get along perfectly well.

Ghislaine Maxwell

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CHAPTER 29

Ghislaine Maxwell: 1991

Robert Meister was not the only friend who helped Jeffrey Epstein, the boy from Coney Island, on his way up the social ladder. There was also Ghislaine Maxwell, a wealthy heiress from the United Kingdom who'd retained her ties to some of the world's most glamorous and scandalous jet-setters.

Maxwell was the youngest and most favored child of one of the most famous—even infamous—men in Europe. Her father, Robert Maxwell, was a Czech refugee who had fought in the French Foreign Legion and with the British in World War II and had gone on to become a member of Parliament. By the 1960s, he'd become a media baron. Born into a Hasidic family—his birth name was Ján Ludvík Hyman Binyamin Hoch—Maxwell died in disgrace in 1991 after falling or perhaps jumping off the side of his supersize yacht, the *Lady Ghislaine.*

"The shtetl Solotvyno, where I come from, it is no more," Maxwell said a few months before his demise. "It was poor. It was Orthodox. And it was Jewish. We were very poor. We didn't have things that other people had. They had shoes, they had food, and we didn't. At the end of the war, I discovered the fate of my parents and my sisters and brothers, relatives, and neighbors. I don't know what went through their minds as they realized that they'd been tricked into a gas chamber."

Maxwell's own death was followed by an international scandal. It turned out that he'd stolen hundreds of millions of pounds from his companies' pension funds and used them to prop up his empire. Two of his sons were tried for conspiracy to commit fraud and ultimately exonerated. But Ghislaine, who had grown up in luxurious surroundings and counted the Duke of York, Prince Andrew, among her intimates, could not escape the dark shadow her father had cast. Looking to start fresh, she took the Concorde to New York City.

At first, it seems, Maxwell and Epstein were lovers. "She was madly in love with Jeffrey," says a longtime friend of Ghislaine's. Then they became something more. Ghislaine took care of Epstein's travel arrangements. She managed his household and opened doors that very few Brooklyn-born Jewish boys could have passed through. According to lawsuits and witness testimony, she also became one of several women who procured young girls for Epstein.

She was not jealous, according to people who knew her back then. If anything, Ghislaine seemed to take pleasure in satisfying Epstein's needs.

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Brooklyn boy knew nothing about. One friend jokes that she taught Epstein the difference between a fish fork and a salad fork. But despite—or was it because of?—Maxwell's devotion to Epstein, she, too, graduated from girlfriend to friend status. According to *Jane Doe 102 vs. Jeffrey Epstein*, a civil complaint filed in 2009 by a woman later identified as Virginia Roberts, one of the services Maxwell provided for Epstein was the procurement of underage women. (Through her lawyer and in court papers, Maxwell has vehemently denied any involvement with Virginia, with any other young woman Epstein was involved with, or with any criminal activities committed by Jeffrey Epstein. In a 2016 answer to a defamation lawsuit brought by Roberts, Maxwell called the allegations fabricated for financial gain.)

The case of Nadia Bjorlin, who was thirteen when she was first noticed by Epstein, raises questions in this regard, at least in the eyes of her mother.

Bjorlin's Iranian-born mother spoke to a British tabloid some years ago about her family's disturbing experience with Maxwell and Epstein. Bjorlin's father, a celebrated conductor of classical music, had died a year earlier, the mother said. She believed that this made the girl a vulnerable and easy target.

"She was at school at the famed Interlochen Arts Center, in Michigan, when she met Epstein," the mother said.

"My daughter was a singer. She was a baby. She was a skinny little girl, not mature for her age. She was thirteen, but everyone thought she was nine or ten.

"Epstein was a big donor, and he heard about Nadia and that her father had died, so she was vulnerable, and he contacted her. He said, 'Here's my number.'

"He kept saying, 'Come—will you come?' He said he wanted to help mentor her. I wouldn't let her meet him. What sort of a man approaches a young girl and asks to meet her?"

In the meantime, Maxwell had become friendly with the family. "I trusted Ghislaine; she was like a mother," Bjorlin's mother recalled. "She was always calling my house.

"Ghislaine didn't want me to meet Epstein, but I did anyway, and I asked what he wanted with Nadia. He said he wanted to help her singing career. He said, 'I'd like to be like a godfather.' It felt creepy.

"I had a bad vibe about him and said, 'Stop!' I told him, 'No, thank you. She doesn't need your help.' I kept Nadia away from him. She never met him alone. She never went anywhere with him."

Despite her suspicions, it took Epstein's arrest to make Bjorlin's mother wonder whether Maxwell and Epstein hadn't been sizing her daughter up for his stable of underage women.

Leslie Wexner: 19

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CHAPTER 30

Leslie Wexner: 1993

Leslie Wexner, the richest man in Ohio, is a proud midwesterner. Born into the rag trade (Wexner's parents were Russian-Jewish immigrants), he grew up to be a straight shooter—taciturn and camera-shy.

For several years running, his 315-foot boat, the *Limitless*, was the largest yacht owned by an American.

Wexner's employees loved him, and he was known to be fiercely loyal to them.

In time, he'd come to see the same qualities in Jeffrey Epstein.

"Everyone was mystified as to what [Epstein's] appeal was," says Robert Morosky, a former vice chairman of the clothing retailer the Limited, founded by Wexner.

"Almost everyone at the Limited wondered who he was," another former employee of Wexner's recalls. "He literally came out of nowhere."

But it seems that Epstein did work hard to untangle Wexner's finances. And it appears he succeeded. "Jeffrey cleaned that up right away," a former associate of Epstein's says.

The two men became all but inseparable.

"Very smart, with a combination of excellent judgment and unusually high standards," Wexner said of Epstein at the time. "Also, he is always a most loyal friend."

When Wexner wanted to break up with a woman he'd been dating for several years—a woman who moved to Ohio and converted to Judaism to make him happy—he dispatched Epstein to do the dirty work.

When Wexner hired a decorator for his Ohio mansion and wanted someone to verify the authenticity of several expensive antiques, Epstein flew in his friend Stuart Pivar, the renowned art collector and author. (According to Pivar, most of the antiques were cheap imitations.) When Wexner traveled abroad, he'd bring back trinkets and gifts for Epstein. When Wexner wanted to see *Cats*, Epstein arranged to have the cast perform in his mansion.

In Ohio, Wexner's associates whispered about his relationship with Jeffrey Epstein. In New York, they wondered about Epstein's role in Wexner's 1993 marriage to Abigail Koppel.

At thirty-one, Koppel was twenty-four years Wexner's junior. It was Epstein who negotiated the prenuptial agreement and orchestrated its very strange signing. Abigail signed the agreement in her law office. Wexner signed it in his office. According to an associate of Epstein's who was present, Epstein brought a *Sports Illustrated* swimsuit model along to Wexner's office, as if

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to make the point that there are other beautiful women in the world. As a joke, Epstein placed the agreement on the model's belly and had Wexner sign it right there.

Epstein asked his friend: "Are you sure you want to do this?"

"Yes, Jeffrey," said Wexner. "Quite sure."

"It was an uproarious scene," Epstein's associate recalls. "Just Jeffrey being Jeffrey. That was his gestalt."

PART III

The Women

CHAPTER 31

Mc2 Model Management's NYC branch is looking for "highly motivated and energetic" interns to assist their agents part-time or full-time. If you're thinking to yourself, who?, it's the agency founded by Jean-Luc Brunel, the guy who first signed Christy Turlington when she was just fourteen. Responsibilities include scanning pictures, answering phones, assisting with updating models' portfolios, and working in Photoshop, Word and Excel (so you have to already know what you're doing in those). You Must: Be interested in the fashion, modeling and photography industries, outgoing, well spoken, and able to keep cool while five different people demand Starbucks / copies / phone calls / etc. This is a great opportunity to get hands-on experience at a smaller agency, plus they can offer a stipend and a Metrocard as well as school credit if needed. Send your resume to intern@mc2mm.com Good luck!

—Julia Hermanns, *Fashionista*, January 30, 2009

Jean-Luc Brunel: 2005

For Jeffrey Epstein, Leslie Wexner is more than a mentor. More than the last in a line of older men—father figures—whom Epstein cultivated while making his way in the world.

Wexner is also a steady, if indirect, source of beautiful women.

After all, Wexner is the man in charge of Victoria's Secret, part of the Limited family of companies and—better yet—in charge of the Victoria's Secret catalog. What this means for Epstein is models galore. In fact, like a fox that's gotten hold of the lease to a henhouse, Epstein, according to evidence collected in a later lawsuit brought by Epstein victims, eventually provided financial support for a modeling agency, and provided support for models employed by that agency, in New York City.

This story begins with a Frenchman—a playboy modeling agent named Jean-Luc Brunel—who was an owner of the Karin modeling agency.

Brunel had been working as a modeling agent since the seventies. He claimed to have launched the careers of Monica Bellucci, Estelle, Jerry Hall, Rachel Hunter, Milla Jovovich, Rebecca Romijn, Kristina Semenovskaya, Sharon Stone, and Estella Warren, as well as Christy Turlington and other well-known cover girls. Brunel had also been a subject of a *60 Minutes* investigation, broadcast in 1988, into sexual exploitation in the modeling industry. That exposé had caused Eileen Ford of the elite Ford modeling agency to sever her ties with the playboy. (Brunel's activities were also chronicled in a 1995 book about the fashion

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industry—*Model: The Ugly Business of Beautiful Women*, by Michael Gross.)

But Brunel's reputation did not prevent Jeffrey Epstein from getting involved in his business.

According to a summary judgment court filing by Bradley Edwards, a victims' lawyer defending against a lawsuit by Jeffrey Epstein alleging fabrication of sexual assault cases against him, Epstein had provided support for Brunel's agency, which changed its name, in 2005, from Karin to MC2—as in $E = mc^2$.

As a scout for MC2, Brunel traveled the world in search of undiscovered talent, favoring Scandinavia, Israel, central Europe, the former Soviet republics, and South America, setting up modeling competitions and negotiating with other international modeling agents and agencies.

But according to the court filing, in which Edwards detailed the information he had gathered in support of victims, Epstein and Brunel had used the agency to bring underage girls from foreign countries into the United States by promising them modeling contracts. These girls were then housed in condominiums belonging to Epstein. "Epstein and Brunel would then obtain a visa for these girls," the document states, "then charge the underage girls rent, presumably to live as underage prostitutes in the condos."

"I strongly deny having participated, neither directly nor indirectly, in the actions Mr. Jeffrey Epstein is being accused of," Brunel would say. "I strongly deny having committed any illicit act or any wrongdoing in the course of my work as a scouter or model agencies manager. I have exercised with the utmost ethical standard for almost forty years."

According to Brunel, his association with Jeffrey Epstein ended up having a strong negative impact on his reputation and business. Several photographers refused to work with him. Other agencies, such as Modilinos Model Management, curtailed their relationships with Brunel. And in 2015, Brunel filed his own civil lawsuit against Jeffrey Epstein, denying that he had any role in Epstein's illegal activities, alleging that Epstein had obstructed justice by telling him to avoid having his deposition taken in the criminal case the Palm Beach PD had built against Epstein, and claiming that false allegations of Brunel's links to Epstein's activities had harmed his reputation and cost him a great deal of business.

In his filing, Brunel included several e-mails from industry contacts who expressed their doubts about placing models with his agency. "Parents don't want their daughters coming to us because [when] they google your name and the agency name the only things they see is 'Sex Trafficking'!!!" one correspondent had written.

Nadia Marcinkova: circ

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CHAPTER 32

Nadia Marcinkova: circa 2000

MC2 has offices in New York City. But Jeffrey's always *in motion*—flying to his homes in New Mexico and the Virgin Islands. Often to Palm Beach. Sometimes to Paris. And when he comes home to New York he hosts parties where important people—corporate titans, real estate tycoons, university presidents, Nobel Prize–winning scientists, princes, ex-presidents, and heads of state—mingle with beautiful women.

Some guests marvel in public: Who *are* these women? Where do they *come* from?

Nadia Marcinkova comes from Slovakia. She looks like a model. But Nadia's done very little modeling, if any. Instead she's become another of Epstein's girlfriends.

According to statements given to the Palm Beach police, she's also served as a willing accomplice in Epstein's sexual assaults on underage females.

Epstein prefers diminutive women, but Nadia is tall. She's rail-thin and blond like the sun, with glowing skin, a wide smile, and sky-high cheekbones.

On a good day, she could pass for a Bond girl—a woman caught up in a web of crime and intrigue. But of course, that's exactly what she is.

In certain circles, the academics and the women in Epstein's orbit are almost a joke. In a 2003 profile of him, *New York* magazine quotes Harvard professors ("He is amazing"), Princeton professors ("He changed my life"), MIT professors ("If I had acted upon the investment advice he has given me over the years, I'd be calling you from my Gulfstream right now"), and other luminaries, up to and including Bill Clinton.

"I've known Jeff for fifteen years," says Donald Trump. "Terrific guy; he's a lot of fun to be with."

No one knew then that someday Trump would run for president. (When he does, he'll attack Hillary Clinton for Bill Clinton's own entanglements with Epstein.) But Trump's already ahead of the curve in that he ends up severing his ties to Epstein well before the police or the media get wind of Epstein's penchant for underage girls.

He does this because he finds out that in their endless hunt for "masseuses," Epstein's procurers have been prowling around Trump's estate in Palm Beach.

Virginia Roberts: 1999

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CHAPTER 33

Virginia Roberts: 1999

Trump's estate, Mar-a-Lago, had once belonged to the fabulously wealthy heiress Marjorie Merriweather Post. It sits on twenty perfectly manicured acres less than two miles away from Jeffrey Epstein's home on El Brillo Way. It's home to the exclusive Mar-a-Lago Club, which has a spa, tennis courts, and a very posh restaurant.

Donald Trump had fought the town council for decades as they blocked all his efforts to turn the place into a private resort. Other clubs on the island—those with a history of excluding blacks and Jews—had never faced such restrictions, Trump had argued. At one point he sent copies of two movies to every member of the town council: *Guess Who's Coming to Dinner,* in which Sidney Poitier confronts his girlfriend's racist parents, and *Gentleman's Agreement,* in which a journalist confronts anti-Semitism in Connecticut and New York City.

"Whether they love me or not, everyone agrees the greatest and most important place in Palm Beach is Mar-a-Lago," Trump told the *Washington Post* after winning his battle. "I took this ultimate place and made it incredible and opened it, essentially, to the people of Palm Beach. The fact that I owned it made it a lot easier to get along with the Palm Beach establishment."

The Breakers hotel, Trump explained, "gets the [island's] leftovers."

It cost $100,000 to join the club. Members paid $14,000 yearly in dues. And although Epstein had never properly joined the club, Trump's friendship with Ghislaine Maxwell gave Epstein unlimited use of the facilities.

This arrangement ended when a member's young daughter complained to her wealthy father: while relaxing at Mar-a-Lago, she'd been approached and invited out to Epstein's house.

The girl said that she had gone and that Epstein had tried to get her to undress.

The girl's father had gone directly to Trump, who—in no uncertain terms—told Epstein that he was barred from Mar-a-Lago.

Because no complaint was filed, the police had taken no action. But years later, a woman named Virginia Roberts would say that, as a young girl, she'd had an identical encounter at Mar-a-Lago.

According to a court document Virginia filed in her civil lawsuit against Epstein, she was a changing-room assistant at Mar-a-Lago, earning about nine dollars an hour, when Ghislaine Maxwell approached her. Maxwell asked Virginia if she was interested in learning to be a massage therapist—which, it turned out, she was. Like the other girl, Virginia told her father,

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who was also employed at Mar-a-Lago as a maintenance manager. But Virginia's father saw nothing wrong with the offer, and he drove her, later that day, to Epstein's house on El Brillo Way.

There, according to the document, Maxwell assured Virginia's father that Ms. Maxwell would provide transportation home for his teenage daughter. Then she led Virginia upstairs, to a spa room equipped with a shower and a massage table. Jeffrey Epstein was lying, naked, on the table.

Virginia was shocked, she says in the filing, but, with no experience with massages, thought this could be massage therapy protocol. "Ms. Maxwell then took off her own shirt and left on her underwear and started rubbing her breasts across [Jeffrey's] body, impliedly showing [Virginia] what she was expected to do," the filing continues. "Ms. Maxwell then told [Virginia] to take off her clothes. The minor girl was apprehensive about doing this, but, in fear, proceeded to follow Ms. Maxwell by removing everything but her underwear. She was then ordered to remove her underwear and straddle [Epstein]. The encounter escalated, with [Jeffrey] and Ms. Maxwell sexually assaulting, battering, exploiting, and abusing [Virginia] in various ways and in various locations, including the steam room and the shower. At the end of this sexually exploitive abuse, [Epstein] and Ms. Maxwell giddily told [Virginia] to return the following day and told her she had 'lots of potential.' [Epstein] paid [Virginia] hundreds of dollars, told her it was for two hours of work, and directed one of her employees to drive her home."

At the time, Virginia was fifteen years old.

CHAPTER 34

Declaration of Virginia Roberts Giuffre: January 19, 2015, filed on January 19, 2015 by attorneys representing Jeffrey Epstein's victims

1. My name is Virginia Giuffre and I was born in August, 1983.

2. I am currently 31 years old.

3. I grew up in Palm Beach, Florida. When I was little, I loved animals and wanted to be a veterinarian. But my life took a very different turn when adults—including Jeffrey Epstein and his close friend Alan Dershowitz—began to be interested in having sex with me.

4. In approximately 1999, when I was 15 years old, I met Ghislaine Maxwell. She is the daughter of Robert Maxwell, who had been a wealthy publisher in Britain. Maxwell asked that I come with her to Jeffrey Epstein's mansion for the purposes of teaching me how to perform "massages" and to train

me personally in that area.
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CHAPTER 34

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me personally in that area. Soon after that I went to Epstein's home in Palm Beach on El Brillo Way.

5. From the first time I was taken to Epstein's mansion that day, his motivations and actions were sexual, as were Maxwell's. My father was not allowed inside. I was brought up some stairs. There was a naked guy, Epstein, on the table in the room. Epstein and Maxwell forced me into sexual activity with Epstein. I was 15 years old at the time. He seemed to be in his 40s or 50s. I was paid $200. I was driven home by one of Epstein's employees.

6. I came back for several days following and did the same sorts of sexual things for Epstein.

7. After I did those things for Epstein, he and Maxwell said they were going to have me travel and were going to get an education for me. They were promising me the world, that I would travel with Epstein on his private jet and have a well-paid profession. Epstein said he would eventually match me up with a wealthy person so that I would be "set up" for life.

8. So I started "working" exclusively for Epstein. He took me to New York on his big, private jet. We went to his mansion in New York City. I was shown to my room, a very luxurious room. The mansion was huge. I was very young and I got scared because it was so big. Epstein brought me to a room with a massage parlor. Epstein made me engage [in] sexual activities with him there.

9. You can see how young I looked in the photograph below [see insert page 3].

10. Epstein took me on a ferry boat on one of the trips to New York City and there he took the picture above. I was approximately 15 or 16 years old at the time.

11. Over the next few weeks, Jeffrey Epstein and Ghislaine Maxwell trained me to do what they wanted, including sexual activities. The training was in New York and Florida, at Epstein's mansion. It was basically every day and it was like going to school. I also had to have sex with Epstein many times.

12. I was trained to be "everything a man wanted me to be." It wasn't just sexual training—they wanted me to be able to cater to all the needs of the men they were going to send me to. They said that they loved that I was very compliant and knew how to keep my mouth shut about what they expected me to do.

13. Epstein and Maxwell also told me that they wanted me to produce information for them in addition to performing sex on the men. They told me to pay attention to the details about what the men wanted, so I could report back to them.

14. While I had juvenile hopes of bettering my life, from very early on I was also afraid of Epstein. Epstein told me he was a billionaire. I told my mother that I was working for this rich guy, and she said "go, go far away." Epstein had promised me a lot, and I knew if I left I would be in big trouble. I was witness to a lot of illegal and bad behavior by Epstein and his friends. If I left Epstein, he knew all kinds of powerful people. He could have had me killed or abducted, and I knew he was capable of that if I did not obey him. He let me know that he knew many people in high places. Speaking about himself, he said "I can get away" with things. Even as a teenager, I understood what this meant and it scared me, as I believe he intended.

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15. I visited and traveled with Jeffrey Epstein from 1999 through the summer of 2002, and during that time I stayed with him for sexual activities at each of his houses (or mansions) in locations including New York City, New York; the area of Santa Fe, New Mexico; Palm Beach, Florida; an island in the U.S. Virgin Islands; and Paris, France. I had sex with him often in these places and also with the various people he demanded that I have sex with. Epstein paid me for many of these sexual encounters. Looking back, I realize that my only purposes for Epstein, Maxwell, and their friends was to be used for sex.

16. To illustrate my connection to these places, I include four photographs taken of me in New Mexico [see insert page 3 for one of the photographs mentioned]. The first one is a museum in Santa Fe, New Mexico. We had gone sightseeing for the day. Epstein took this picture of me. I was approximately 17 at the time, judging from the looks of it. At the end of the day we returned to Epstein's Zorro Ranch. The second picture is me on one of Epstein's horses on the ranch in New Mexico. The following two are from wintertime in New Mexico.

17. When I was with him, Epstein had sex with underage girls on a daily basis. His interest in this kind of sex was obvious to the people around him. The activities were so obvious and bold that anyone spending any significant time at one of Epstein's residences would have clearly been aware of what was going on.

18. Epstein's code word for sexual encounters was that it was a "massage." At times the interaction between Epstein and the girls would start in the massage room setting, but it was always a sexual encounter and never just a massage.

> *19. In addition to constantly finding underage girls to satisfy their personal desires, Epstein and Maxwell also got girls for Epstein's friends and acquaintances. Epstein specifically told me that the reason for him doing this was so that they would "owe him," they would "be in his pocket," and he would "have something on them." I understood that Epstein thought he could get leniency if he was ever caught doing anything illegal, or that he could escape trouble altogether.*

Roberts submitted her declaration in support of a motion to be added as a plaintiff in a suit (ongoing, as of this writing) that sought to overturn a non-prosecution agreement that Jeffrey Epstein would reach with the government. Roberts was seeking to join a case brought against the government by two other victims, but a judge denied her motion in April of 2015, explaining that the case had already been pending for several years, and it was unneccesary to add an additional plaintiff.

Roberts's declaration, which goes on for another eight pages, and makes twenty-four additional points, was stricken from the record—the judge explained that the "lurid" and "unnecessary details" involving "non-parties" to the lawsuit against the government, were "immaterial and impertinent" to the proceedings.

Through a representative, Ghislaine Maxwell called the allegations against her "obvious lies," after which Roberts filed a defamation suit against Maxwell. In an answer filed in the suit, Maxwell elaborated that Roberts's "story of abuse at the hands of Ms. Maxwell" was "fabricated" for financial gain.

Alicia: May 20, 1997

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CHAPTER 35

Alicia: May 20, 1997

Donald Trump's instincts regarding Jeffrey Epstein were solid. But if the reporters who were beginning to look into Epstein's mysterious background had dug a bit further, there's a chance they would have hit pay dirt as well—and not just in Palm Beach.

In California, for instance, a paper trail already stretched from the Santa Monica Police Department to Epstein's front door.

In the spring—almost the summer—of 1997, a call came in to the police. The young woman who placed it—a young actress who'd appeared on *Baywatch* and *General Hospital*—said she'd been sexually assaulted at a trendy hotel called Shutters on the Beach.

The officer who took the call knew the woman's name—Alicia*—and her voice. A week earlier, she'd told him about an encounter with Epstein. The woman had not wanted to make a formal complaint at the time. But she had taken the cop's card, and now he was happy to hear that she'd changed her mind.

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* Alicia's name, some identifying details, and dialogue have been changed.

In a shaky voice, Alicia described Epstein as a tallish man—five feet eleven or six feet in height was her guess—with gray hair and brown eyes. He was the owner of a large black four-door Mercedes and was a regular at Shutters on the Beach, which was the kind of place that cost one thousand dollars a night and was frequented by actors, agents, and other Hollywood types.

Alicia told the cop that she was a model and actress herself. She'd known Epstein for about a month. They had a friend in common, and she'd sent him her head shots.

Then, through an assistant, Epstein had invited her to meet in his room at the hotel.

Alicia said she was having reservations, the officer wrote in his report, *because generally interviews are not conducted in hotel rooms.*

According to her, things turned frightening quickly.

> *She was unsure she was safe because although she wanted to land the job as a 'Victoria's Secret' catalog model she felt as though Epstein was attempting to get her to act in an unprofessional manner for a model.*

Epstein wore navy blue sweatpants and a white T-shirt, she recalled. The T-shirt had the letters *USA* printed on it in patriotic red, white, and blue.

> *Epstein told her to undress and actually assisted her to do so while saying 'let me manhandle you for a second.'*

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Then, Alicia told the cop, *Epstein groped her buttocks against her will while acting as though he was evaluating her body.* Alicia had stopped Epstein, and left the room, but couldn't get over the incident.

At the top of his crime report, the officer wrote "Sexual Battery." But Epstein was never charged in the incident. "The Santa Monica Police Department discounted every one of [Alicia's] allegations of improper conduct by Jeffrey Epstein and they took no action on this 1997 complaint," Epstein's West Palm Beach attorney, Jack Goldberger, told the *Palm Beach Post* in 2010.

"The cops said it'd be my word against his," Alicia told the paper. "And since he had a lot of money, I let it go. I hadn't thought much about it since, until I saw his picture online. And now, I want everybody to know how much of a creep he's always been."

CHAPTER 36

Graydon Carter: December 2002

Graydon Carter, the legendary editor of *Vanity Fair,* likes to get to his office early, well before the rest of his staff files in.

Most monthly magazines operate at a leisurely pace—three weeks of coming up with ideas, assigning articles, and shooting the shit in the corporate kitchen followed by one frantic week when all the actual editing gets done. But this isn't the case at *Vanity Fair,* which runs hard-hitting investigative pieces alongside its glitzy celebrity profiles. There are also parties to plan and host—incredibly glamorous parties, including the annual Oscar-night bash, which is more fun and far more exclusive than the Academy Awards ceremony itself. *Vanity Fair* is an old, famous brand. But Carter is its public face, just as Anna Wintour is the face of Condé Nast's iconic fashion magazine, *Vogue.*

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CHAPTER 36

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One cover of *Vanity Fair* can turn a minor celebrity into a superstar. And a single thoroughly researched story can bring down a corporate overlord.

Carter's easy to recognize: the pompadour of white hair, like a lion's mane. The Santa Claus body stuffed into an impeccably tailored bespoke suit. He wears his fame lightly. But he could not be more serious about his responsibilities, which are weighing heavily on him this month. Months earlier, he'd assigned a piece to Vicky Ward, an Englishwoman who wrote frequently for *Vanity Fair.* He'd meant for it to be an easy assignment: Ward was pregnant with twins. She wasn't allowed to fly. But here was a story right on her doorstep. A nice, easy profile of Jeffrey Epstein. Who was he, really? Carter knew he threw fabulous parties attended by academics, billionaires, and beautiful women. Recently he'd flown Bill Clinton to Africa. But no one seemed to know how he had made his fortune. Epstein's story reminded the editor of F. Scott Fitzgerald's *The Great Gatsby.*

Carter himself could have stepped out of a novel—though in his case, the author would be Horatio Alger. A Canadian college dropout who'd worked as a railroad lineman, he arrived in New York in his late twenties and commenced an astonishingly quick rise up the social and media ladders. But where Carter was open and outgoing, Epstein really was Gatsby-like—very little about him was known. Maybe, Carter thought, Ward could find out. What did Epstein do, exactly, for money? Why was he so secretive? Why were so many brilliant and powerful men drawn to him? And where did those beautiful women come from?

Almost immediately, Epstein began a campaign to discredit Ward. He prevailed upon Conrad Black, the press baron and

Epstein's Palm Beach neighbor—who was also a step-uncle of Vicky Ward's husband—to ask Ward to drop the story. But Ward was tenacious, and what she came back with was dynamite. More interesting and much more salacious than anything Carter had imagined.

Now Carter's staff was putting in the hours it would take to confirm all the things she'd uncovered, picking the ones they could publish and laying them all out in a narrative that would be no less explosive than the facts it contained.

Vicky Ward: October

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CHAPTER 37

Vicky Ward: October 2002

Epstein went out of his way to spin the *Vanity Fair* story to his own ends, and soon after she got the assignment, Vicky Ward's phone began to ring off the hook: calls from Ace Greenberg and Jimmy Cayne, the current head of Bear Stearns; from Les Wexner; from academics, scientists, and movers and shakers who counted Epstein among their friends.

Then there were the calls from Epstein himself. He wouldn't go on the record, but despite the rumors he'd spread behind Ward's back, he was happy to talk informally, even give her a tour of his Manhattan mansion and trot out stories that he had dined out on for years. By most accounts, Epstein could be extremely charming—even if it had taken Ghislaine to teach him which forks to use when—and he did his best to charm Vicky Ward. But she was not easily seduced, and she turned out to have a keen eye for Epstein's missteps.

Over tea in his town house, she noticed, Epstein ate all the finger food that had been put out for both of them. She found it odd that the only book this supposedly brilliant man had left for her to see was a paperback by the Marquis de Sade. And then there was the call afterward from one of Epstein's assistants—a woman Ward did not know—who told her, "Jeffrey wanted me to tell you that you looked so pretty."

Ward is pretty, with fine English features and flowing blond hair. She was also *very* pregnant then, with a bad case of morning sickness. She threw up often, sometimes in public, and these clumsy advances on Epstein's part only added to her ever-present nausea. For a man who was supposedly brilliant, he'd struck her, oddly, as not very *smart*.

"Epstein is charming, but he doesn't let the charm slip into his eyes," she wrote. "They are steely and calculating, giving some hint at the steady whir of machinery running behind them. 'Let's play chess,' he said to me, after refusing to give an interview for this article. 'You be white. You get the first move.' It was an appropriate metaphor for a man who seems to feel he can win no matter what the advantage of the other side. *His* advantage is that no one really seems to know him or his history completely or what his arsenal actually consists of. He has carefully engineered it so that he remains one of the few truly baffling mysteries among New York's moneyed world. People know snippets, but few know the whole."

The testimonials Epstein's friends gave were glowing: "I think we both possess the skill of seeing patterns," Les Wexner told her. "Jeffrey sees patterns in politics and financial markets, and I see patterns in lifestyle and fashion trends. My skills are

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not in investment strategy, and, as everyone who knows Jeffrey knows, his are not in fashion and design. We frequently discuss world trends as each of us sees them."

"I'm on my 20th book," said Alan Dershowitz, who'd met Epstein in 1997. "The only person outside of my immediate family that I send drafts to is Jeffrey."

But Ward also talked to other sources, who had their own questions and qualms about Jeffrey Epstein. Some were involved in lawsuits against him. Others had served on prestigious boards with him. One who had witnessed Epstein's aborted stint on the board of Rockefeller University called him arrogant.

One powerful investment manager wondered about Epstein's conspicuous absence from New York's trading floors. "The trading desks don't seem to know him," he says. "It's unusual for animals *that* big to not leave any footprints in the snow."

Ward uncovered legal documents, including Epstein's interview with the SEC, given in the wake of his departure from Bear Stearns. She visited a federal prison in Massachusetts and spoke at length with Steven Hoffenberg, who told her that Epstein had made a major mistake in taking Bill Clinton to Africa. "I always told him to stay below the radar," Hoffenberg said. He made other accusations, about Epstein's financial practices, which Epstein denied—and Ward knew that Hoffenberg, the Ponzi-scheme mastermind, was not to be trusted. But she did find it strange that throughout the reporting process Epstein was much less openly concerned with what she'd found out about his finances than with what she'd uncovered about his dealings with women.

Time and again, he would call and ask her: "What do you have on the *girls?*"

* * *

One young woman Ward talked to had been invited by Ghislaine Maxwell to attend a party at Epstein's town house. There, the woman had noticed, female guests far outnumbered the male guests. "These were not women you'd see at Upper East Side dinners," the woman had said. "Many seemed foreign and dressed a little bizarrely."

"This same guest also attended a cocktail party thrown by Maxwell that Prince Andrew attended, which was filled, she says, with young Russian models," Ward wrote. "'Some of the guests were horrified,' the woman says."

Another source, one who had worked with Epstein, said, "He's reckless, and he's gotten more so. Money does that to you. He's breaking the oath he made to himself—that he would never do anything that would expose him in the media. Right now, in the wake of the publicity following his trip with Clinton, he must be in a very difficult place."

Vicky Ward: Novembe

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CHAPTER 38

Vicky Ward: November 2002

"What I had 'on the girls,'" Ward explained in a *Daily Beast* article published after Epstein's arrest, "were some remarkably brave first-person accounts. Three on-the-record stories from a family: a mother and her daughters who came from Phoenix. The oldest daughter, an artist whose character was vouchsafed to me by several sources, including the artist Eric Fischl, had told me, weeping as she sat in my living room, of how Epstein had attempted to seduce both her and, separately, her younger sister, then only 16."

Ward had written it all down in her notes. She had crossed the t's, dotted the i's.

But when she called Epstein to get his response, he denied the allegations completely.

"Just the mention of a 16-year-old girl," Epstein told her, "carries the wrong impression. I don't see what it adds to the piece. And that makes me unhappy."

If some sort of criminal investigation had taken place, that would have been one thing. But, at that time, no criminal investigation into Epstein's affairs had been launched. And in the absence of an investigation, the rumors of Epstein's dealings with very young women seemed to be just that—rumors.

Graydon Carter consulted his lawyers, his editors, and his fact-checkers. And then something odd and disturbing happened at the Condé Nast building, then in Times Square.

As usual, Carter had come into the office early. He swiped his key card in the lobby, pressed the elevator button, and arrived in the hallway outside the reception area on the twenty-first floor.

It would have been a perfect time to review Ward's story.

Her description of Epstein's town house—which is said to have been the largest private residence in New York City at the time—was priceless: "Inside, amid the flurry of menservants attired in sober black suits and pristine white gloves, you feel you have stumbled into someone's private Xanadu," she'd written. "This is no mere rich person's home, but a high-walled, eclectic, imperious fantasy that seems to have no boundaries. The entrance hall is decorated not with paintings but with row upon row of individually framed eyeballs; these, the owner tells people with relish, were imported from England, where they were made for injured soldiers. Next comes a marble foyer, which does have a painting, in the manner of Jean Dubuffet... but the host coyly refuses to tell visitors who painted it. In any case,

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Jeffrey Epstein, Coney Isl
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CHAPTER 58

Prince Andrew: 2011

Prince Andrew also fares poorly in the wake of Epstein's imprisonment.

The two men are old friends. They have been ever since Ghislaine Maxwell introduced the prince to her then-beau, sometime in the 1990s. In 2000, Epstein had been invited to Windsor Castle to celebrate the queen's birthday. Six months later, Epstein flew to Sandringham, the queen's estate in Norfolk, England, for a party Prince Andrew threw for Ghislaine's thirty-ninth birthday.

The prince had also visited Epstein on several occasions, in Palm Beach as well as in New York. And if allegations Virginia Roberts made in her 2015 declaration are to be believed, Epstein asked her to give the prince whatever he required, then report back with the details.

According to the *Guardian*, Epstein and the prince had partied together at Windsor Castle, in Saint-Tropez, and in Thailand, where "Andrew was pictured on a yacht surrounded by topless women."

According to Roberts's lawsuit, Epstein had forced her into the prince's bed on Little Saint Jeff's.

After Epstein's conviction, the British press were using another name for Little Saint Jeff's: Sex Island. The *Guardian* reported that the manager of two Virgin Islands–based corporations owned by Epstein happened to be the wife of the governor of the Virgin Islands. There were allegations involving a million-dollar donation that Epstein had made to the governor's reelection campaign. And then there was Roberts's claim that she had been forced to have sex with the prince on the island as well as in New York and in London.

Invariably, the photograph of Prince Andrew with his arm around the bare midriff of a very young-looking Virginia Roberts ran with stories that appeared in the tabloids.

"It is emphatically denied that the Duke of York had any form of sexual contact or relationship" with Roberts, Buckingham Palace spokespersons would say. "The allegations made are false and without any foundation."

The prince's ex-wife, Sarah Ferguson, the Duchess of York, while on a skiing trip with the prince and their daughter Eugenie in Switzerland, told reporters, "He is the greatest man there is. It was the finest moment of my life in 1986 when I married him. He is a great man, the best in the world."

"I won't stand by—because I know what it feels like to have salacious lies made up about you—and not support him so publicly because they are just shockingly accusatory allegations,

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Despite all this, the prince had
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which I don't think is right," she said a few days later when interviewed by *Today* host Matt Lauer. "It's a defamation of character, and as a great father and a humongously good man and all the work he does for Britain I won't stand by and let him have his character defamed to this level."

But at the same time, a certain schadenfreude attended the good man's fall from grace, and former associates kept coming out of the woodwork to dish to the press.

"I've seen him treat his staff in a shocking, appalling way," said a former aide to the prince. "He's been incredibly rude to his personal protection officers, literally throwing things on the ground and demanding they 'fucking pick them up.' No social graces at all. Sure, if you're a lady with blond hair and big boobs, then I bet he's utterly charming."

Despite all this, the prince had stuck by Epstein. There was even a photo, frequently trotted out by the tabloids, of the two of them strolling in Central Park.

Some few months before it was taken, a reporter posing as a businessman had secretly taped Sarah Ferguson's demand for five hundred thousand pounds in return for access to the prince.

"If you want to meet him in your business," she'd said then, "look after me, and he'll look after you. You'll get it back tenfold."

"Once again," she said afterward, "my errors have compounded and rebounded and also impacted on the man I admire most in the world: the Duke."

Prince Andrew had had his troubles already—with shady real estate deals, sticky romances, highly embarrassing document dumps (courtesy of Julian Assange and WikiLeaks), and questionable ties to Tunisian oligarchs, corrupt presidents of former Soviet republics, and Mu'ammar Gadhafi, among other entanglements, many of which were explored in a *Vanity Fair* article headlined THE TROUBLE WITH ANDREW.

"The duke has a record of being loyal to his friends," a "royal source" told *Vanity Fair*'s Edward Klein. "Take his feelings for Sarah Ferguson. If you are a prince and you bring a woman into the royal life and, for whatever reasons, she's spit out, you might have feelings of debt toward her. The duke feels that she's been spattered and rejected. His close relationship with the Duchess of York is problematic, and there have been many problems over the last 5 to 10 years, all of which stem from the duchess. Some of the behavior of the duchess is inconsistent with being married to, or an ex-wife of, the duke. There's no question but that Sarah's been a financially self-destructive element in the duke's life."

"The same kind of loyalty manifested itself last December, when the duke visited Epstein at his home in New York," said a spokesperson for Buckingham Palace. "Epstein was a friend of the duke's for the best part of 20 years. It was the first time in four years that he'd seen Epstein. He now recognizes that the meeting in December was unwise."

"Don't expect to see a photo of the two of them together," another "royal source" would say.

But one more story about the prince's dealings with Jeffrey Epstein had already emerged.

At a dinner party at Epstein's town house, the prince dished about the wedding of his nephew Prince William to Kate Middleton.

"He was amused that his dinner companions were so inter-

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gossip columnist. "Wha
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ested in every detail," a guest in attendance told a *New York Post* gossip columnist. "What would Kate wear, what would the Queen wear, would his ex-wife Sarah Ferguson be invited?"

Other guests in attendance that night included Chelsea Handler, George Stephanopoulos, Charlie Rose, Katie Couric, and Woody Allen.

At around the same time, Jeffrey Epstein told the *New York Post,* "I'm not a sexual predator, I'm an 'offender.' It's the difference between a murderer and a person who steals a bagel."

Was it so remarkable that Prince Andrew would have been seen in Epstein's company? Andrew's philandering had been tabloid fodder for years. Randy Andy, they called him in the UK. And in the circles that Jeffrey Epstein moved in, philandering wasn't seen as a vice. Epstein came of age just as industrywide deregulation took hold on Wall Street. Junk bonds were king. Call girls were charging ten thousand dollars a night. And in the shadows, you'd see things that would have made Caligula blush. Sights that would make Nero himself reach for the nearest fire extinguisher. When the urge presented itself, the new super rich didn't have to swap wives.

They could simply swap harems.

By the same token, was it so very strange to think that a man like the prince would have grown so detached from reality—insofar as *reality* is even a word that applies to a prince? Was it odd that he thought it was absolutely fine to be seen by photographers strolling through Central Park with a registered sex offender—when at the time large swaths of the financial, banking, and trading industries were characterized by their very detachment from day-to-day concerns such as morality, ethics, and appearances?

As for Jeffrey Epstein, one question that might be worth asking is, if he's in fact a narcissist and megalomaniac, could he actually believe that he's *innocent?* Then again, that might be the wrong question. Epstein did plead guilty, after all. But what if he simply doesn't see what he pleaded to as a crime? What if he's *proud* of his lifestyle? And if that's the case, why *wouldn't* Prince Andrew be proud to be seen in public with his dear friend Jeffrey Epstein?

What if, for people like Epstein and the prince, it's just servants and masters, the way of the world? They're natural winners—*aristocrats,* after all—and if life were fair, well, how would we know who the real winners are?

Anna Salter: Novemb

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CHAPTER 59

Anna Salter: November 2015

Why do powerful men do the things that Jeffrey Epstein and Prince Andrew have been accused of doing?

Dr. Anna Salter studies child sex offenders professionally. Educated at Harvard, with a graduate degree in clinical psychology, she spoke, with the benefit of hindsight, about Jeffrey Epstein and others like him from her office in Madison, Wisconsin.

"Consider a car," says Dr. Salter. "There's a motor, and there are brakes. We all have sexual impulses we don't think it would be a good idea to act on. Most of us have good control over our behavior. We have good brakes.

"Sexual offenses and inappropriate sexual behavior are sometimes the result of a bad motor—for example, an attraction to prepubescent children or eleven-to-fourteen-year-old pubescent children as opposed to postpubescent individuals. But they are always the result of bad brakes.

“Antisocial psychopaths don’t have brakes at all.”

Dr. Salter has never met Epstein, but she’s followed his case closely and finds him a familiar type. She’s especially struck by the singular nature of the relationship between powerful, wealthy men and vulnerable, underage women.

“[The men] are more impressive to a fourteen-year-old [girl] than to, say, an adult young woman who is self-supporting and feels more sure of herself,” she explains.

“They are attracted to what they call freshness—barely budding sexuality and lack of sexual experience. The difference between them and their victims feeds their ego.

“Great wealth and access are generally factors that make men feel they are entitled to whomever and whatever they want. Some have narcissistic personalities with inflated self-images. And of course, great wealth and status make such men think they can get away with it. Too often, they’re right.”

On the other hand, Dr. Salter believes that certain conditions, such as the ones exhibited by Jeffrey Epstein, might be an inborn character trait.

Personality can be influenced, sometimes quite heavily, by genetics.

“Virtually no one believes anymore that humans are born a totally blank slate,” she explains.

“We arrive with temperamental and personality variations that, of course, the environment can often, but not always, influence. We arrive with baggage.”

Is Epstein a born psychopath, then?

“*Psychopathy* is the umbrella term for individuals who do not have a conscience. Pyschopaths are often narcissistic, but narcissists are often not psychopathic. Some individuals who prey

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on young girls delude themselves into thinking that the abuse will not harm the child. They have a conscience, but they have medicated it with thinking errors. Others are flat-out psychopathic and simply don't care if it hurts the young girl or not. I can't say anything about Epstein, as I have not evaluated him, but narcissism and psychopathy are concepts an evaluator would look at concerning anyone who was sexually attracted to postpubescent individuals but who then began to focus on younger teens.

"Psychopaths are often superficially charming, high-stimulus seekers who are bored if not doing something. They lie, con, and manipulate. They do not establish deep affective ties.

"They are callous and remorseless individuals who simply don't feel bad about harming someone.

"Rules don't apply to them because they are exceptional. They are sure they won't get caught."

CHAPTER 60

Jeffrey Epstein: July 2010

Jeffrey Epstein was done with jail, but he wasn't done settling suits brought by his victims. Under the conditions of his non-prosecution agreement, he's even paid for the victims' lawyers. Still, Epstein's NPA seemed to ensure that he would not be prosecuted again for his crimes. Double jeopardy was working in Epstein's favor. But in July of 2010, reports began to appear in the press: federal investigators were following other leads—leads that could result in child-trafficking charges and a twenty-year sentence.

The Florida attorney general's office refused to comment. It was against policy to confirm or deny the existence of an ongoing investigation. One of Epstein's lawyers told the *Daily Beast* that he had no knowledge of such an investigation. "Jeffrey Epstein has fully complied with all state and federal requirements that arise from the prior proceedings in Palm Beach," Jack

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CHAPTER 60

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ral's office refused to comment. It or deny the existence of an ongo- stein's lawyers told the *Daily Beast* of such an investigation. "Jeffrey with all state and federal require- or proceedings in Palm Beach," Jack Goldberger said. "There are no pending civil lawsuits. There are not and should not be any pending investigations, given Mr. Epstein's complete fulfillment of all the terms of his non-prosecution agreement with the federal government."

If there was an investigation, nothing had come of it yet. For the moment, Epstein was free—free to turn his attention, again, to intellectual pursuits. He launched a website, JeffreyEpsteinScience.com, that featured blog posts such as "Conversations with Jeffrey Epstein," "The Value of Quantum Computation to Jeffrey Epstein," "Why Evolutionary Biology Intrigues Jeffrey Epstein," and "An Understanding of Theoretical Physics from Jeffrey Epstein." The latter post began: "This is where Jeffrey Epstein takes you to the very cutting edge of the frontiers of knowledge to explore and discuss our basic understanding of the subtle, simple, and hidden [qualities] that lie beneath . . . our universe."

"Jeffrey doesn't know shit about science," says Stuart Pivar, the art collector who has known Epstein for more than three decades. "Does he like to act like he does? Yes. But he doesn't. But as far as these academic scientists—without people like him they wouldn't have any money."

Other friends of Epstein's say that he truly did have a brilliant mind for science. And in any case, Epstein had done more than sponsor individual scientists. He'd also sponsored conferences on Little Saint Jeff's. On his website, he announced a conference called Mindshift at which Nobel laureates, such as the theoretical physicist Murray Gell-Mann, would mix with surgeons, engineers, and futurists and where professors would discuss cognitive neuroscience, artificial intelligence, systems of encryption and decryption, and other topics.

Epstein had been hosting get-togethers like this for years. Toward the end of Chief Reiter's investigation, in March of 2006, Epstein had hosted twenty top physicists—including three Nobel Prize winners as well as the celebrity physicist Stephen Hawking—at a Saint Thomas symposium called "Confronting Gravity," which was advertised as "a workshop to explore fundamental questions in physics and cosmology."

"This is a remarkable group," one of the Nobel Prize winners told a reporter for the *St. Thomas Source.*

"There is no agenda except fun and physics, and that's fun with a capital F," Epstein said.

Epstein had been especially interested in Stephen Hawking. Someday, Hawking had theorized, the universe would stop expanding and collapse, at which point time would begin to run backwards. Hawking believed that computer viruses were living things. He thought that given the size of the universe, alien life forms existed. He did not believe in God. But he had a vast appreciation for the inner workings of the universe, and this is why Epstein gave Hawking a tremendous gift. He paid to have a submarine modified so that it could fit Hawking and his wheelchair and give the scientist his first glimpse of an actual alien world—the one that lies under the waves of the ocean.

It was one of the most romantic, generous gestures that Jeffrey Epstein had ever made.

Al Seckel: January 201

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CHAPTER 61

Al Seckel: January 2012

Epstein's partner in the Mindshift conference, a man named Al Seckel, was known for throwing fabulous parties that were said to have included the actor Dudley Moore, magician James "the Amazing" Randi, and future Tesla and SpaceX founder Elon Musk, as well as many of the scientists Jeffrey Epstein would court in the course of his own climb up the social ladder.

In certain Los Angeles circles, Al Seckel was a very good man to know. But, like Jeffrey Epstein, Seckel was a sort of illusionist. According to Mark Oppenheimer, a journalist who knew Seckel and followed his career for fifteen years, Seckel made his money by selling rare books and papers, often through his social and academic connections.

"A number of these transactions resulted in accusations and lawsuits," Oppenheimer would write. "In speaking to former

Seckel acquaintances, I kept hearing variations on a scheme Mrs. Pearce Williams believed he perpetrated against her late husband, the man Seckel said was his mentor. Seckel took books and promised money, or he took money and promised a book; but somehow, the promised party lost money."

"He was charming, erudite, humorous," one of Seckel's marks told the reporter. "I lent him $75,000. When the time came to pay it back he didn't want to do it."

Oppenheimer found several people whom Seckel had stiffed and uncovered dozens of lawsuits he'd been involved in. In 2007, Seckel settled a libel lawsuit against a man who'd edited his *Wikipedia* page. Years later, Oppenheimer spoke with Seckel's lawyer, Nicholas Hornberger.

"Hornberger confirmed that he'd reached a settlement for the case, a favorable one," the journalist wrote. "Hornberger added that Seckel has still not paid him for his services."

He also interviewed Seckel's wife, Isabel Maxwell.

Al and Isabel met on a blind date and married in Malibu in or "around" 2007 ("I don't keep the dates in my head," Seckel explained). A few years later, they moved to the South of France, where Seckel continued to trade in rare books and papers. While living in France, he was sued by a Virgin Islands company that accused him and Isabel of fraudulently attempting to sell rare books and a seventeenth-century portrait of Isaac Newton.

Seckel had also been trying to sell papers belonging to Isabel's father.

Isabel is Ghislaine Maxwell's sister and the daughter of Robert Maxwell.

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It was an odd thing, Epstein's association with this self-professed PhD who, on closer inspection, turned out to be a bit of a grifter. But the Mindshift conference that Epstein and Seckel hosted in the Virgin Islands did take place, in 2010. Murray Gell-Mann was there, along with Leonard Mlodinow, a physicist who coauthored books with Stephen Hawking. Gerald Sussman, an expert on artificial intelligence who taught at MIT and also attended the conference, said that he didn't remember too much about it.

"We had scientific discussions, talked about various things," he said vaguely.

When Mark Oppenheimer asked him if he'd given money to Seckel, Sussman "got testy" with the reporter.

"I have had some dealings with him," Sussman said. "I don't want to say what it's about, because I don't feel good about it, okay?"

Today, Epstein's websites—JeffreyEpsteinFoundation.com and JeffreyEpsteinScience.com—are down. Their domain names have long since expired. Several recipients of Epstein's charitable contributions, including New York's Mount Sinai Hospital and Ballet Palm Beach, announced that they would not be accepting new gifts.

"The further I can keep myself from anything like that the better," said Ballet Palm Beach founder Colleen Smith.

But in 2012, Epstein held one more conference on Little Saint Jeff's. Once again, three Nobel Prize winners were in attendance. Stephen Hawking was also there. All in all, Epstein had gathered twenty-one physicists—from Princeton, Harvard, MIT, and CERN (the European Organization for Nuclear Research)—to "determine what the consensus is, if any, for defining gravity."

According to a press release issued by Epstein's foundation, the consensus that did emerge was that space is "not quite empty."

Jeffrey Epstein: Februar

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CHAPTER 62

Jeffrey Epstein: February 2, 2011

It's Groundhog Day, and once-reclusive Jeffrey Epstein is hitting the peak of his fame in a ripped-from-the-headlines episode of *Law & Order: SVU* that tracks, eerily well, with his own legal history.

The setup for this episode is the rape of a very young French girl. One who's been flown to New York on a very rich man's private jet, then flown back — coach class — to Paris.

On the plane, she has a freak-out. She thinks the middle-aged guy sitting next to her is trying to rape her. In Paris, the local police get involved.

"It was just a birthday party," the tearful girl tells the SVU cops via videoconference from France. "We were his present."

The cops ask: Whose present?

"The billionaire. The one who owns the jet."

Does the French girl know his name?

"Jordan. He wanted a massage. But I had to take off my clothes. He climbed on top of me. It hurt. I started to bleed, and it wouldn't stop. The doctor came."

"Dominique," the cops say. "We're going to arrest this man. But we need you to return to New York so you can testify."

"Non," says the girl. *"Non! Jamais! Jamais!"*

For Epstein, there are other embarrassments, many of which have to do with his royal friends. The wedding of Prince William and Kate Middleton is approaching, and the ongoing troubles of Prince William's uncle Prince Andrew keep threatening to derail the festivities. On March 6, a spokesperson for Sarah Ferguson confirms that Epstein paid off part of the seventy-eight thousand pounds that the duchess borrowed from a man who was once her personal assistant.

The next day, headlines appear in the *Telegraph* and other British papers: DUKE OF YORK "APPEALED TO JEFFREY EPSTEIN TO HELP DUCHESS PAY DEBT."

"I personally, on behalf of myself, deeply regret that Jeffrey Epstein became involved in any way with me," Prince Andrew's ex-wife tells journalists. "I abhor paedophilia and any sexual abuse of children and know that this was a gigantic error of judgment on my behalf.

"I am just so contrite I cannot say. Whenever I can I will repay the money and will have nothing ever to do with Jeffrey Epstein ever again."

That week, as part of the ongoing civil lawsuits against Epstein, Sarah Kellen and Nadia Marcinkova are both asked about Prince Andrew's relations with Epstein.

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"Have you ever been m
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Nadia Marcinkova are both asked
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"Would you agree with me that Prince Andrew and Jeffrey Epstein used to share underaged girls for sexual relations?" Kellen is asked.

"On the instructions of my lawyer," Kellen replies, "I must invoke my Fifth Amendment privilege."

"Have you ever been made to perform sexually on Prince Andrew?" lawyers ask Marcinkova.

"Fifth" is Nadia's simple, succinct reply.

That same week, the government downgrades Prince Andrew's role as Great Britain's royal trade envoy. But the British press is tenacious, and in the *Telegraph*, the *Guardian*, and elsewhere, stories appear on a daily basis:

- *The Duke, His Paedophile Guest, and the Most Unusual Use of an RAF Base*
- *Andrew's Secret Love Life Revealed*
- *Royal Connections: Prince Andrew and the Paedophile Are Suddenly the Talk of New York*
- *Time to Show This Right Royal Clown the Door*
- *An Odd Trio: The Royal Trade Envoy, the Teenage Masseuse and the Fixer*
- *No. 10 Struggles to Contain Row Over Prince*
- *From Royal Asset to National Liability*
- *Royal Blush*
- *Duke Could Be Called to Two Epstein Trials*
- *It's the Company You Keep... The Duke's Dangerous Liaisons*
- *Nothing Grand About This Old Duke of York*
- *The Royal Family Has Feared a Blow-Up Over Duke's Choice of Friends For Years*
- *Our Less-Than-Grand Old Duke of York*

On March 11, a devastating undersea earthquake and tsunami move Japan's main island by several feet, shifting the earth on its axis. The destruction is horrific and unprecedented. But on March 13, the *Daily Mail* devotes four pages and seven separate articles to Prince Andrew. That same day, the *Telegraph* runs three pieces, and the *Sunday Times* runs a two-page spread headlined GUN SMUGGLER BOASTS OF SWAY OVER ANDREW.

On March 14, the *Guardian* runs one more piece about Andrew's troubles.

PRINCE ANDREW DOMINATES HEADLINES DESPITE THE EARTHQUAKE, the headline reads.

Alan Dershowitz: Septen

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HEADLINES DESPITE THE EARTHQUAKE,

CHAPTER 63

Alan Dershowitz: September 2014

If the ongoing lawsuits are costing Epstein millions, he has millions left to spare. Meanwhile, the FBI's investigation into whether Epstein trafficked underage women across state lines seems to be going nowhere. As 2014 draws to a close, it's beginning to look as if Epstein is finally free and clear of the case.

But for Epstein's friend and sometime lawyer Alan Dershowitz, things are about to get very unpleasant.

At the start of 2008, Bradley Edwards, the Fort Lauderdale lawyer, had filed a motion in a West Palm Beach court on behalf of two unnamed women accusing Prince Andrew and Alan Dershowitz of participating directly in Epstein's illegal activities.

Prince Andrew had had no comment to make, and Dershowitz had objected to the accusations in the strongest possible terms.

"There's absolutely no kernel of truth to this story," he'd said.

"I don't know this woman. I've never been in the same place with her. She's made the whole story up out of whole cloth."

Bradley Edwards had already become involved in lawsuits against Epstein. In 2007, working with a former federal judge and University of Utah law professor named Paul Cassell, he had filed a lawsuit on behalf of another unnamed woman. Six years later, that case is still pending, and now, Edwards and Cassell petition to have the two suits combined.

All in all, four Jane Does take part in the lawsuit.

Jane Doe 3 is Virginia Roberts, the girl who says that Ghislaine Maxwell recruited her for Epstein at Trump's resort, Mar-a-Lago.

Epstein had "lent" her and other young girls to prominent businessmen, important politicians, world leaders, and other powerful men in order "to ingratiate himself with them for business, personal, political, and financial gain, as well as to obtain blackmail information," Roberts claims.

She says that Epstein forced her and other underage girls to take part in an orgy in the Virgin Islands.

She names Prince Andrew and Alan Dershowitz as two of the men she'd been forced to have sex with and claims that Dershowitz had been "an eyewitness to the sexual abuse of many other minors by Epstein and several of Epstein's co-conspirators."

This time, Prince Andrew does respond to the allegations.

"This relates to longstanding and ongoing civil proceedings in the United States, to which the Duke of York is not a party," Buckingham Palace says in a short statement. "As such we would not comment on the detail. However, for the avoidance of doubt, any suggestion of impropriety with underage minors is categorically untrue."

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Alan Dershowitz also goes on the attack. Virginia's claims are part of a plot to extort him, he claims. The motion that Edwards and Cassell have filed is "the sleaziest legal document" he's ever seen.

"They manipulated a young, suggestible woman who was interested in money," Dershowitz says. "This is a disbarrable offense, and they will be disbarred. They will rue the day they ever made this false charge against me." It's a vehement denial. But then, the allegations made by Virginia Roberts, on January 15, 2015, in a declaration filed against the government in an attempt to overturn Jeffrey Epstein's non-prosecution agreement, are highly disturbing.

CHAPTER 64

Declaration of Virginia Roberts Giuffre, filed on January 19, 2015 by attorneys representing Jeffrey Epstein's victims (continued)

20. Harvard law professor Alan Dershowitz was around Epstein frequently. Dershowitz was so comfortable with the sex [that] was going on that on one occasion he observed me in sexual activity with Epstein.

21. I had sexual intercourse with Dershowitz at least six times. The first time was when I was about 16, early on in my servitude to Epstein, and it continued until I was 19.

22. The first time we had sex took place in New York in Epstein's home. It was in Epstein's room (not the massage room). I was approximately sixteen years old at the time. I called Dershowitz "Alan." I knew he was a famous professor.

23. The second time that I had sex with Dershowitz was at Epstein's house in Palm Beach.

24. I also had sex
Ranch in New Mexico
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25. We also had se
U.S. Virgin Islands.
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but he is lying and denyi
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29. I kept asking Eps
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to go to Chiang Mai to l
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30. On September 27, 2
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CHAPTER 64

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at I had sex with Dershowitz was
Beach.

24. I also had sex with Dershowitz at Epstein's Zorro Ranch in New Mexico in the massage room off of the indoor pool area, which was still being painted.

25. We also had sex at Little Saint James Island in the U.S. Virgin Islands.

26. Another sexual encounter between me and Dershowitz happened on Epstein's airplane. Another girl was present on the plane with us.

27. I have recently seen Alan Dershowitz on television calling me a "liar." He is lying by denying that he had sex with me. The man I've seen on television, described as a former law professor, is the same man that I had sex with at least six times. Dershowitz also knows that Epstein had sex with other underage girls and lent me out to other people, but he is lying and denying that....

28. After years of abuse and being lent out, I began to look for a way to escape. I had first gone into Epstein's household because I wanted to be a massage therapist. Epstein had taken me into his clutches through promises and talk and for some time I believed him. But once he had me under his control, regardless of my doubts and fears, I felt trapped.

29. I kept asking Epstein for my promised training and education. Epstein finally got me a plane ticket to Thailand to go to Chiang Mai to learn Thai massage. This sounded like my chance to escape. In September 2002, I packed my bags for good. I knew this would be my only opportunity to break away.

30. On September 27, 2002, I flew from JFK in New York to Chiang Mai, Thailand. I arrived around September 29 for my training. But Epstein was going to get something out of *this trip as well. I was supposed to interview a girl and bring her back to the United States for Epstein.*

31. [Left blank in the original]

32. *I did the massage training in Chiang Mai. While I was there, I met a great and special guy and told him honestly what I was being forced to do. He told me I should get out of it. I told him that the people I was working for were very powerful and that I could not walk away or disobey them without risking serious punishment, including my life. He told me he would protect me. I had confidence [in] him and I saw his love and help as my opportunity to escape and to be with someone who truly loved me and would protect me. I married him and flew to Australia.*

33. *I called Epstein and told him I was not coming back. He asked why? I said "I've fallen in love." Epstein basically said "good luck and have a good life." I could tell he was not happy. I was afraid of what he was going to do to me. I thought he or one of his powerful friends might send someone to hurt me or have me killed.*

34. *From that point onward, out of concern for my safety and general well-being, I stayed in Australia with my husband. I was in Australia from late 2002 to October 2013. To be clear, I was never in the United States during these years, not even for a short trip to visit my mother. And my absence from the United States was not voluntary—I was hiding from Epstein out of fear of what he would do to me if I returned to the United States.*

35. *In around 2007, after not hearing from anyone for years, out of the blue I was contacted by someone who identified himself with a plain sounding name and claimed he was*

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who this person was and
tell what was going on.

36. *This man said he*
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with the FBI. It seemed very odd for someone doing an official criminal investigation to just call up on the phone like that. I hadn't heard Epstein's name for years. I didn't know who this person was and what it was really about. I couldn't tell what was going on.

36. This man said he was looking into Jeffrey Epstein. The man asked if I had been involved with Epstein. My first instinct was to say nothing because I wasn't sure he was really with the FBI or any authorities. I answered a few basic questions, telling him that I knew Jeffrey Epstein and had met him at a young age. But the conversation didn't feel right. This man never offered to come and meet with me in person. Instead, he asked me right off the bat about Epstein's sexual practices. I thought it would be strange for a true law enforcement officer to behave that way, so I became increasingly uncomfortable and suspicious about who was actually calling me.

37. I told the man nothing more about Epstein. The conversation probably didn't even last three minutes, but it immediately triggered all of the fears of Epstein and his powerful friends that had caused me to escape in the first place. If the call accomplished anything, it only put me back in a state of fear and told me that I could be found quite easily and had nobody officially protecting me.

38. I suspected that the man who called me was working for Epstein or one of Epstein's powerful friends. I believed that if this was really an agent who was investigating Epstein, he would have known who I was and how I fit into Epstein's sexual crimes in many different places. He would have interviewed me in a way that would have established his credentials *and would have shown how he could provide potential protection from Epstein. That never happened.*

39. Getting a call from this supposed FBI agent made me scared all over again. I had left the old life of sexual slavery behind me and started a new life in a new country in hopes that the powerful people whose illegal activities I knew all about would never find me.

40. Shortly after this purported FBI call, I was contacted by telephone by someone who appeared clearly to be working for Epstein. The caller told me about an investigation into Epstein and said that some of the girls being questioned were saying that Epstein had had sexual contact with them. After they made these allegations, the man said they were being discredited as drug addicts and prostitutes, but in my case, if I were to keep quiet, I would "be looked after." The fact that this call was made shortly after the supposed FBI call reinfor[c]ed my concern that the man I had talked to earlier was not really working for the FBI but for Epstein. I didn't think that the FBI and Epstein would both be working together and would both get my phone number at almost exactly the same time. I played along and told this person that I had gotten a call from the "FBI" but that I didn't tell him anything. The person on the phone was pleased to hear [that].

41. A short time later, one of Epstein's lawyers (not Alan Dershowitz) called me, and then got Epstein on the line at the same time. Epstein and his lawyer basically asked again if I was going to say anything. The clear implication was that I should not. The way they were talking to me, I was afraid of what would happen if I didn't keep quiet. My thought was

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> *that if I didn't say what they wanted me to say, or not to say, I might get hurt.*
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> *42. I promised Epstein and his lawyer that I would keep quiet. They seemed happy with that and that seemed to me to [be the] way to keep me and my family safe. And I did what Epstein and his lawyer told me. I kept quiet.*

This declaration, stricken from the record by the judge in the victims' lawsuit against the government, also set in motion events that led to Dershowitz's and Roberts's lawyers becoming involved in spectacular lawsuits, which included a complaint by Dershowitz that these allegations were false and had defamed him, and a complaint by Edwards that Dershowitz's accusations against him were false and defamatory.

CHAPTER 65

Alan Dershowitz: October 2015

About fifteen minutes into the ripped-from-the-headlines episode of *Law & Order: SVU* that was inspired by the Jeffrey Epstein saga, the plot takes an interesting turn: before officers have a chance to arrest him, Jordan, the character modeled on Epstein, shows up at SVU headquarters.

The twelve-year-old French girl raped *him*, Jordan says.

Wearing a monogrammed fleece pullover like the ones favored by Jeffrey Epstein, he describes an evening at home.

"The party was in full swing," he explains. "A friend said she wanted to give me a *special* present. Told me to wait in my massage room—"

An SVU guy interrupts: "Guy has a massage room?"

"I suffer from chronic back pain," Jordan says.

"While I was waiting, I fell asleep. Now, at first I thought I must be dreaming. I was aroused. I felt myself being manually

manipulated. Then I reme
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"What did you see?"

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"It was dark. I just wan

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Guy has a massage room?"
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ell asleep. Now, at first I thought I
used. I felt myself being manually

manipulated. Then I remembered it was my present. I started to enjoy myself. But then it got rough, and that's when I opened my eyes."

"What did you see?"

"A woman. A woman I'd never seen before."

"A woman? Dominique Moreau was *twelve!*"

"It was dark. I just wanted her off of me. I tried to stop her."

"But the twelve-year-old overpowered you?"

"No. She *threatened* me. She said if I didn't let her... continue, she was going to scream 'Rape.'"

"And there was nothing that you could do? You've got forty years and a hundred pounds on the girl."

"The party was going on right outside the door. I knew how this was going to look. I was naked. She was naked. What could I do?"

It was a brilliant plot twist—one that ultimately allowed Jordan to get off scot-free.

But the plot twist that Epstein's own story ended up taking on the day of Alan Dershowitz's deposition at a Broward County, Florida, courthouse was even more surprising.

"There was a criminal extortion plot," Alan Dershowitz told Brad Edwards and Paul Cassell's lawyer, Jack Scarola, on October 15, 2015.

"Your clients were involved."

Bradley and Cassell had sued Dershowitz in Broward County for defamation—payback for extremely negative comments the law professor had made in the media.

Dershowitz had countersued. His reputation was on the line, and he had come armed for battle.

"I'm thrilled they sued me," he'd told reporters. "In the end, someone will be disbarred. Either it will be me or the two lawyers."

But if Dershowitz was swinging for the fences in his struggle to keep his hard-earned reputation afloat, he still had a bombshell to drop. When deposed by Scarola, he proposed his own theory about why Virginia Roberts had named him, along with Prince Andrew, as one of the men who had sexually abused her at Epstein's New Mexico ranch, in New York City, and in Palm Beach.

A theory that implicated the lawyers who were suing *him* in a much larger conspiracy.

According to Dershowitz, Brad Edwards pressured Virginia Roberts into identifying Dershowitz as one her assailants.

Dershowitz said that Edwards did this so that they could blackmail Jeffrey Epstein's patron Leslie Wexner for one *billion* dollars.

Roberts lied about him, Dershowitz maintained, to give Wexner an idea of what would happen to him if Edwards's demands weren't met.

Furthermore, Dershowitz said, he had *proof*.

Excerpts from the Deposi
October 15, 2015

9:46 a.m.

Q: In an interview with Hala
broadcast on *CNN Live*, yo
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A: I have a superb memory, sc
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CHAPTER 66

Excerpts from the Deposition of Alan Dershowitz: October 15, 2015

9:46 a.m.

Q: In an interview with Hala Gorani on January 5 of this year, broadcast on *CNN Live*, you said, "I have a superb memory." Do you acknowledge having made that statement?

A: I have a superb memory, so I must have made that statement. My mother had an extraordinary memory, and when I was in college and I was on the debate team, my mother allowed me to debate on the Sabbath, which was Jewish rest day, only on the condition that I not take notes or write. And at that point I discovered that I have a very good memory and don't have to—generally didn't have to take notes. My memory, obviously, at the age of seventy-seven has slipped a bit; but do I have a very good memory, yes.

* * *

10:18 a.m.

Q: Which of my clients are you swearing under oath encouraged Virginia Roberts to include allegations of an encounter with you at the New Mexico ranch?

A: Both of them—both of your clients, both Judge Cassell and Mr. Edwards—were both involved in encouraging [their] client to file a perjurious affidavit that they knew or should have known was perjurious recently when they sought to file another defamatory allegation in the federal proceeding.

Q: Was the arrangement such that what you are charging Bradley Edwards and Professor Paul Cassell with doing was suborning perjury?

A: Absolutely. If you ask me the question, I am directly charging Judge Cassell and Bradley Edwards with suborning perjury. I have been advised that Virginia Roberts did not want to mention me, told her friends that she did not want to mention me. And was, quote, pressured by her lawyers into including these totally false allegations against me. Yes, your clients are guilty of suborning perjury.

Q: Who told you that Bradley Edwards pressured Virginia Roberts into falsely identifying you?

A: A friend of Virginia Roberts who called me out of the blue and told me that she was horrified by what was happening to me and that she recently had meetings with Virginia Roberts and Virginia Roberts had told her that she never mentioned me previously. That the lawyers pressured her into mentioning me. And mentioni
me, yes.

10:20 a.m.

Q: What was the name of
A: Her name is—her first
Q: Yes.
A: I don't know the last na
Q: Did you attempt to find
A: I have her last name wr
Q: Where?
A: It's in my—in my notes
Q: When did you write Re
A: When she—when she f
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At first her husband a
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ing me. And mentioning me over her desire not to mention me, yes.

10:20 a.m.

Q: What was the name of the person?
A: Her name is—her first name is Rebecca.
Q: Yes.
A: I don't know the last name.
Q: Did you attempt to find out her last name?
A: I have her last name written down, but—
Q: Where?
A: It's in my—in my notes. And I could get it for you....
Q: When did you write Rebecca's name down?
A: When she—when she first called me—let me be very clear, since you've asked me the question.

At first her husband and she called me on the phone. They would not give me their names. But they told me [the] story. We had a series of phone conversations in which I asked them, please, to tell me their names. And after a period of time, after they told me the story in great detail, she was willing to give me her name. She asked me to promise that I would not disclose her identity without her permission. I have been trying to call her. Called her as recently as this morning and last night.

I want to recall—I don't think I called her this morning. I called her twice last night to try to get her permission to reveal her complete name and identity. But I have the name, and I will be happy to give it to you. I just don't have it off the top of my head.

* * *

10:23 a.m.

Q: Would you tell us how many phone conversations [you had] with this person Rebecca?

A: More than six. Probably between six and ten, maybe closer to ten. The first few [times] she called me, and after I got their number I called her a number of times.

Q: What is her husband's name?

A: Michael. Different last name from hers, but again.

Q: Where do they live?

A: Palm Beach. Or West Palm Beach, in the Palm Beach area. They have been friends of Virginia Roberts since she was a young child.

Q: Were there any witnesses to any of these phone conversations other than Rebecca, Michael, and you?

A: Yes.

Q: Who?

A: My wife.

Q: When did the first conversation occur?

A: I can probably get you specific information about that. But it was months ago. When the story was in the newspapers, she called and related the entire story to me and related to me that it was part of a massive extortion plot.

10:25 a.m.

Q: Did you take contemporaneous notes of those phone conversations?

A: No. I took note of nai
stance, no.

Q: Have you ever made n
any communications t
and/or Michael?

A: I didn't "allegedly" have
versations. And I don't
tions.

10:44 a.m.

Q: How many phone calls d
before she informed you
ing you?

A: She informed me the firs

Q: The very first conversati

A: Yes.

Q: How many phone calls w

A: She never asked me for n

Q: How many phone calls v
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A: I was never asked for mo

Q: Do you know how it is t
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A: They told me they went
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neous notes of those phone conver-

A: No. I took note of names, but not really notes of the substance, no.

Q: Have you ever made notes with regard to the substance of any communications that you allegedly had with Rebecca and/or Michael?

A: I didn't "allegedly" have these conversations. I had these conversations. And I don't recall taking notes of those conversations.

10:44 a.m.

Q: How many phone calls did you have with this person Rebecca before she informed you as to the reason why she was calling you?

A: She informed me the first time.

Q: The very first conversation.

A: Yes.

Q: How many phone calls was it before she asked you for money?

A: She never asked me for money.

Q: How many phone calls was it before her husband asked you for money?

A: I was never asked for money, ever.

Q: Do you know how it is that these people knew how to contact you?

A: They told me they went to my website and got my number and left a message for me to call. Yeah, that's what happened. Oh, no; they sent me—they went on my website and sent me an e-mail and asked me—and the e-mail had a blank name but a way to respond. And so I responded with my phone number and they called, is my recollection. That's my best recollection.

10:45 a.m.

Q: So from the very first conversation that you had with this person, you had information indicating that this person was informing you that Bradley Edwards had engaged in unethical conduct, correct?

A: Let me just be very clear what she said to me. She said to me that she had been told directly by her friend Virginia Roberts, who stayed with her overnight for a period of time, that she never wanted to mention me in any of the pleadings. And that her two lawyers in the pleadings, or her lawyers who filed the pleadings, pressured her into including my name and details.

Q: Did Rebecca ever suggest to you that the details sworn to by Virginia Roberts were false?

A: She certainly suggested that, yes. She mentioned to me that Virginia Roberts had never, ever mentioned [me to her], among any of the people that she had had any contact with, until she—until she was pressured into doing so by her lawyers, yes.

Q: So from the very first conversation, the impression you had was that this was a witness who could provide information that Bradley Edwards and Paul Cassell had acted unethically and dishonestly, correct?

A: I wasn't sure she could provide the information because she was very reluctant to come forward. She didn't want to be

involved. But I knew sh
yes, but I didn't know,
prepared to be a witne
question.

11:08 a.m.

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A: I don't remember.

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involved. But I knew she had provided me with information, yes, but I didn't know, and I still don't know, whether she is prepared to be a witness. I don't know the answer to that question.

11:08 a.m.

Q: Was any request made by you for a meeting?

A: Yes.

Q: Let me back up then, if I could, please. Because what I want you to do, based upon your superb memory, is to tell us in as much detail as you possibly can recall everything that was said....

A: I'm not sure the request for the meeting came in the first call or the second call.... The first call was basically, I'd really like to talk to your wife [Rebecca] about this. I'm happy to fly down. I'm happy to talk to you on the phone. And we left it that they would think—that she would—that he would ask her to think about it. And that I could call back in a—in a few days and find out what her—what her current feelings were.

Q: Where were you when you received this phone call—or when you made this phone call? Sorry.

A: I think I was in New York.

Q: Do you know whether that phone call was made on a cell phone or a landline?

A: I don't remember.

Q: Have you attempted to gather your telephone records for purposes of responding to discovery requests in this case?

A: I left that to my lawyers. I know that we did produce telephone records during the relevant periods of time when Virginia Roberts knew Jeffrey Epstein, and those telephone records established that I could not have been at the locations and at the times that Virginia Roberts claimed to have had—falsely claimed to have [had] sexual contact with me.

Q: I promise you we're going to get to those.

A: Good.

Q: Promise you. Along with all the flight logs that you claim exonerate you.

11:11 a.m.

Q: Let's go to the very second contact that you had with either Michael or Rebecca. Who initiated the second contact?

A: I think I did. I called and got Michael on the phone.

Q: Where did you call from?

A: I think New York.

Q: Tell me in as much detail as your superb memory allows you to recall everything that was said during the course of that phone conversation.

[Dershowitz's lawyer]: Let's object to the form and the continued use of the word *superb*. He's described his memory. That's your characterization. Go ahead.

Q: No, I think that that was Mr. Dershowitz's characterization, which I have adopted.

[Lawyer]: Okay. Go ahead.

A: I called, spoke to Michael. I asked Michael if he had spoken to his wife. She said yes, and she was still reluctant to talk to me.

Q: I'm sorry—she said yes
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he was still reluctant to talk to me.

Q: I'm sorry—she said yes when you asked Michael if he had spoken to his wife?

A: He said yes. And that she was still reluctant to talk to me. I suggested to him that perhaps she could talk to me briefly just so that she hears what I have to say. And he could listen and remain on the phone, and she could stop at any time she wanted. And there came a time during that conversation when she did get on the phone, and here's what she told me. She said she had grown up with Virginia Roberts. That they were very, very close friends as young people. That Virginia Roberts came to stay with her for a number of days, I think it was over Halloween, and they had gone out and had dinner, just the two of them. And that she confided in her; Virginia Roberts confided in Rebecca that she had never wanted to mention me in any of the pleadings, but she was pressured by her lawyer into doing so. Rebecca then said that I was not the object of this effort. The object of the effort was a billionaire who lives in Columbus, Ohio, and who owns Victoria's Secret and Limited Too. Rebecca told me she did not know the name of that billionaire, but that Virginia and her lawyers hoped to get one billion dollars, b-i-l-l-i-o-n, one billion dollars, or half of his net worth, from him by alleging that he had improperly engaged in sexual misconduct with Virginia Roberts. That money would be divided three ways: a third of it to Virginia Roberts, a third of it to a charity that she and her lawyers were setting up for battered women, and a third of it to the lawyers.

She then told me that they were trying to get ABC News to interview Virginia Roberts so as to give her credibility in order to pressure the billionaire from Columbus, Ohio, into paying a large sum of money. And that I was named as an effort to try to show the billionaire what could happen to somebody if they were accused of sexual misconduct. And that would encourage him to settle a lawsuit or pay money in exchange for his name not being mentioned or revealed. I had no idea about this. And I didn't—I didn't ask about this. She just stated this. And I then corroborated the fact that she was absolutely correct in everything she had said to me.

Q: You corroborated the fact that she was absolutely correct in everything that she had said to you?

A: That's right.

Q: How?

A: Okay. Let me answer that question. I was very—I wasn't sure, so I called Leslie Wexner. I got his wife on the phone, Abigail Wexner. Obviously I knew that the only billionaire in Columbus, Ohio, who owned Limited Too and who owned Victoria's Secret was Leslie Wexner. I had met Leslie Wexner on two occasions, I think, and his wife. I called Abigail on the phone and I said, "I think you ought to know that there is an extortion plot being directed against your husband by unscrupulous lawyers in—in Florida." And she said, "Oh, we're aware of that; they've already been in contact with us," which surprised me. But [her statement] was confirmation of that. I then also—I can't give you the chronology of that. I then was in touch with ABC and found out she was absolutely correct about her efforts to try to get interviewed on ABC television. In fact, I learned that your client, Brad Edwards, had sent a communication to people in the area urging them to watch her interview that was scheduled to be on three television programs. If I'm not mistaken, it was [the] *Good Day Show,*

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the evening news, and the show *Nightline*.... I then was in communication with ABC and helped to persuade them that they would be putting false information on the air if they allowed Virginia Roberts to tell her false story. So I was able to corroborate that. I then also corroborated the fact that she had never mentioned me when her boyfriend appeared on television and publicly stated that she had never mentioned me in any of her description[s] of people who she had sexual contact with. So I was then completely satisfied that Rebecca was telling me the complete truth. And that in my view, there was an extortion plot directed against Leslie Wexner, a criminal extortion plot directed against Leslie Wexner, and that your clients were involved in that extortion plot.

11:30 a.m.

Q: Let's see if we can make sure that we're understanding one another, sir. Do you recognize that there's a distinction between Virginia Roberts having met you, having been sexually abused by you on multiple occasions, but not wanting to name you as opposed to Virginia Roberts never having met you and never having been sexually abused by you...? Are those two things different in your mind?

A: Not in the context of this case. Because Virginia Roberts said that she was going to seek justice from everybody that had abused her. And if she didn't want to name me, I think the inference is inescapable that I was not among those people that she had had any sexual contact with. So that was certainly the inference I drew....

* * *

11:35 a.m.

Q: Who are the people that Rebecca says Virginia had previously told her that Virginia was abused by?

A: I never asked her that question.

Q: Did you ask her was Les Wexner one of the people that abused Virginia?

A: I told you I never asked her the question.

Q: Are you aware that years before December of 2014, when the CVRA pleading was filed, that your name had come up repeatedly in connection with Jeffrey Epstein's abuse of minors, correct?

A: I am aware that never before 2014, end of December, was it ever, ever alleged that I had acted in any way inappropriately with regard to Virginia Roberts, that I ever touched her, that I ever met her, that I had ever been with her. I was completely aware of that. There had never been any allegation. She claims under oath that she told you that secretly in 2011, but you have produced no notes of any such conversation. You, of course, are a witness to this allegation and will be deposed as a witness to this allegation. I believe it is an entirely false allegation that she told you in 2011 that she had had any sexual contact with me. I think she's lying through her teeth when she says that. And I doubt that your notes will reveal any such information. But if she did tell you that, she would be absolutely, categorically lying. So I am completely aware that never—until the lies were put in a legal pleading at the end of December 2014, it was never alleged that I had any

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sexual contact with Virginia Roberts. I know that it was alleged that I was a witness to Jeffrey Epstein's alleged abuse, and that was false. I was never a witness to any of Jeffrey Epstein's sexual abuse. And I wrote that to you, something that you have falsely denied. And I stand on the record. The record is clear that I have categorically denied I was ever a witness to any abuse, that I ever saw Jeffrey Epstein abusing anybody. And—and the very idea that I would stand and talk to Jeffrey Epstein while he was receiving oral sex from Virginia Roberts, which she swore to under oath, is so outrageous, so preposterous, that even David Boies [a prominent lawyer associated with the firm representing Virginia Roberts] said he couldn't believe it was true.

12:24 p.m.

Q: You engaged in a mass-media campaign to convince the world that Bradley Edwards and Professor Paul Cassell were unethical lawyers who had fabricated false charges against you, correct?

A: No, that's not correct. I responded to press inquiries by telling the truth. My goal was to let the world know that Virginia Roberts's allegations against me were totally false. These two stories appeared, as far as I can tell, in every single newspaper in the world and on every media, which was part of their plot and the plan of your clients, which is why they absurdly mentioned Prince Andrew, claiming in the most absurd way—that they mentioned him because he was trying to lobby prosecutors to get a reduced sentence for Jeffrey

Epstein; they obviously put Prince Andrew in there in order to get massive publicity around the world. And every media in the world, practically, called me, from the BBC to CBS to ABC to CNN, and I responded to lies with the truth.

Q: And the truth that you attempted to convey was that Bradley Edwards and Professor Paul Cassell were unethical lawyers who fabricated false charges against you, right?

A: The truth that I intended to convey was that the charges against me were false and fabricated, that I never had any sexual contact—

Q: Fabricated by whom, sir?

A: Please don't interrupt me.... that I never had any sexual contact with Virginia Roberts. Because Professor Cassell insisted on conveying to the public that he was a former judge and that he was a professor and that he was using—improperly, in my view—the stationery and name of his university to add credibility to his claims, I felt that it was imperative for me to indicate that he was engaging in improper and unethical conduct. It would have been improper for me to have allowed his use of his credibility as a former federal judge, as a professor who uses, misuses, his university imprimatur—it was very important for me to attack the credibility of the messengers of the false information. And it was important for me to also remind the public that Bradley Edwards was a partner of [Scott] Rothstein, a man who is spending fifty years in jail for fraudulently creating a Ponzi scheme to sell Jeffrey Epstein cases that didn't exist.

Scott Rothstein: 2009

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CHAPTER 67

Scott Rothstein: 2009

Scott Rothstein was a flashy Fort Lauderdale ex-lawyer who parked his collection of cars in an air-conditioned warehouse, kept a copy of the Torah on his desk, and hung a portrait of Al Pacino as Michael Corleone outside his office. One of his nicknames was TPOFD, short for "the Prince of Fucking Darkness," and in private, he'd say things like: "Understand that the repercussions of engaging me could open the gates of hell. Understand that I am capable of evil far beyond anything your imagination could ever conjure up."

Rothstein hosted receptions for prominent politicians—John McCain, Bobby Jindal, Arnold Schwarzenegger—and handed out hundreds of thousands of dollars at a time in campaign contributions. He gave millions more to charitable institutions: the Joe DiMaggio Children's Hospital; the American Heart

Association. By all outward appearances, he could afford it: seventy lawyers worked in his firm, which had offices in Florida, New York, and Venezuela. But Rothstein's millions actually came from a $1.2 billion Ponzi scheme he'd been running since 2005.

In April of 2009, Bradley Edwards joined Rothstein's firm. The lawyer brought his papers along, and Rothstein showed those pertaining to Epstein to potential investors. In exchange for a lump sum up front, Rothstein said, investors would receive a far larger chunk of money later, which Epstein would pay in future settlements.

Edwards and Rothstein both say that Edwards had no knowledge whatsoever of the Ponzi scheme. (Prosecutors, and the Florida Bar, agree.) Edwards left as soon as he caught wind of the scheme, in November of 2009. But the few months he spent in Rothstein's company gave Dershowitz the opening he needed to pry open Virginia Roberts's accusations.

It was at Edwards's insistence, Dershowitz would say, as well as Paul Cassell's, that Virginia Roberts added Dershowitz's name to the list of men she claimed had abused her.

According to Dershowitz, he'd been pulled into a billion-dollar extortion plot Edwards had hatched. And for Edwards and Cassell, there had been a secondary benefit: Dershowitz had helped to work out Epstein's confidential non-prosecution agreement with the government. By implicating him directly in Epstein's abuse of underage women, Dershowitz claimed, Edwards and Cassell were trying to "open up" that agreement.

It might have been a Hail Mary pass on the part of Alan Dershowitz.

But the argument had its own internal logic.

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The idea that Bradley Edwards and Paul Cassell were trying to blackmail *Leslie Wexner*—blackmail him for one *billion* dollars, no less—sounds highly improbable. But we do know for a fact that Edwards had worked with Rothstein—a man who'd been running his own billion-dollar con.

Edwards may not have known that Rothstein was taking his files on Jeffrey Epstein and showing them to investors. But Edwards's *proximity* to Rothstein didn't look good. It may not have been as damaging as Dershowitz's close friendship with Epstein, but it was damaging nonetheless. It gave Dershowitz the opening he needed to make his argument. And the genius of Dershowitz's argument was that it wasn't necessarily predicated on an actual plot to blackmail Wexner. Maybe the thing Edwards was really after was the idea that *a lawyer who helped work out Epstein's non-prosecution agreement* was also having sex with Virginia Roberts. That *would* give Edwards leverage in trying to crack the agreement open. And in that case, was it so hard to imagine him pressuring Virginia Roberts to add Dershowitz's name to the list?

Perhaps it wasn't, in this scenario. Virginia would have still felt reluctant to mention Dershowitz. If she was, there was the matter of the three hundred million dollars, and then some, that she would stand to gain. And the three hundred million or so that goes to set up a charity for battered women? If the scenario Dershowitz had thrown out was true, that would have been a genius move on Edwards's part—the sort of detail that helps the whole psychological picture fall into place. If Virginia felt guilty for lying about Dershowitz, she could think of the thousands of battered women she'd end up helping.

All these possibilities seemed bizarre. And yet *everything* connected with Epstein's story seemed to be bizarre.

Bill Clinton got the use of a jet out of Epstein—a trip to Africa. But he and Epstein weren't bosom buddies.

As for Prince Andrew, we already know how he feels about women.

But what did Dershowitz get out of Epstein, aside from Epstein's wise counsel on all the books he'd written?

One advantage Dershowitz had, as he laid out his argument, was that when it came to Jeffrey Epstein, all bets were off. He didn't have to establish his innocence. All he had to do was make sure that the waters stayed muddy. The more complicated things seemed to be, the better they were for Dershowitz.

Thanks to Jeffrey Epstein's actions, and the endlessly complicated cycle of suits and countersuits those actions inspired, those waters were very muddy indeed.

Scott Rothstein

On October 27, 2009, Floric
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Scott Rothstein

On October 27, 2009, Florida's governor, Charlie Crist, left Scott Rothstein a voice-mail message.

"Hey, Scott," the governor said. "It's Charlie, your favorite Greek governor. Hope you're doing well, buddy. Just wanted to touch base and let you know I'm working Versace for November twenty-fourth, and it is going amazingly well—unbelievable, brother.... Really enjoyed again seeing you and Kimmie and watch[ing] a little football and best to you guys from Carol and me. We love you. Take care. Bye-bye."

That same day, Rothstein took a chartered Gulfstream V to Casablanca, Morocco. For a while, it seemed as if Rothstein was running. But a few days later, the same Gulfstream returned to Fort Lauderdale. The Ponzi king had decided to turn himself in.

The moment he did, he started to sing like a canary in return for a lenient sentence. Rothstein gave up dozens of associates—the list included people at his law firm, law enforcement officers, and his own wife, Kimmie, who was arrested for hiding more than one million dollars' worth of jewelry.

All in all, more than thirty people involved in Rothstein's schemes were arrested and sentenced.

Thanks, in part, to his cooperation with the feds, his was the only Ponzi scheme in history in which all the victims recovered their money. In return, Rothstein was put into a witness protection program and is serving his fifty-year sentence anonymously, in an undisclosed prison location.

Alan Dershowitz

On November 10, 2015, Alan Dershowitz arrived at Shriver Hall, on the campus of Johns Hopkins University, in Baltimore, to talk about the Arab-Israeli conflict.

"The outlines for peace are so obvious," he said. "There has to be a two-state solution."

Fifteen minutes into the talk, a group of women—students belonging to a group called Hopkins Feminists—stood up in protest. Dressed all in black, with duct tape over their mouths, they held up a sign and marched out of the hall.

YOU ARE RAPE CULTURE, the sign read.

Afterward, a reporter for the student paper asked Dershowitz about Jeffrey Epstein and Epstein's victims. Wasn't it true that Dershowitz had implied that one of those victims was "asking for it?"

"I'm a defense attorney," Dershowitz replied. "I have an obligation under the Constitution to provide a full and zealous defense to my clients. If I have failed to do all the things you had just listed, I could be disbarred. I could be found incompetent as counsel."

He asked the reporter,
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und incompetent as counsel."

He asked the reporter, "Would any defense lawyer not look on the websites, look on social networks, find out what the woman who was accusing my client was doing? We were able to disprove many of the charges, just like how I was able to disprove the charges against me. Falsely charging somebody with rape is a heinous thing to do. First of all, it creates horrors for the person who has been falsely accused. Second, it so hurts real rape victims because it makes it clear that some women lie for money. Our country, unlike others, requires that everybody be defended, and I'm going to continue to do that whether my clients are guilty or innocent. Let me tell you, most of my clients have been guilty. They deserve a zealous defense just as anybody else. I'm very proud of what I did for Jeffrey Epstein. If people don't like the fact that I got a 'good deal,' that's the job I do."

The suits and countersuits Paul Cassell, Bradley Edwards, and Dershowitz filed against each other dragged on into the spring of 2016—reaching a crescendo with Dershowitz's argument about the plot to blackmail Les Wexner. But on April 8, all the parties involved agreed to settle, issuing a joint statement that read: "Edwards and Cassell acknowledge that it was a mistake to have filed sexual misconduct accusations against Dershowitz; and the sexual misconduct accusations made in all public filings (including all exhibits) are hereby withdrawn. Dershowitz also withdraws his accusations that Edwards and Cassell acted unethically. Neither Edwards, Cassell, nor Dershowitz have any intention of repeating the allegations against one another." Dershowitz also hired former FBI director Louis J. Freeh to do an independent investigation. Freeh concluded that the evidence his team reviewed refuted the accusations of sexual misconduct against Dershowitz.

For Alan Dershowitz, the long nightmare he'd had to endure as a result of his friendship with Jeffrey Epstein finally seemed to be over.

Ghislaine Maxwell

Trying to put her troubles with Epstein behind her, Ghislaine Maxwell took up a new calling.

"She's doing something to save the oceans now," a socialite says over the din of cocktail-party chatter at a private Palm Beach Club.

Maxwell's nonprofit, the TerraMar Project, describes itself as "a platform for citizenship and transformation of the high seas." Its focus is on cleaning up the eight million metric tons of plastic debris—garbage—that are dumped into the world's oceans each year. (Sources say that an earlier enterprise, the Seed Media Group, was funded by Jeffrey Epstein in 2005 to the tune of two million dollars.)

"Is anybody here staying awake at night because they're frightened about the ocean?" she asks in 2014 at a TEDx talk in Charlottesville, Virginia. "Are you scared about what could happen? Are you trying to think about what could you do that would help the ocean and all its myriad of troubles?"

But although her efforts on behalf of the environment are sincere and articulate, Ghislaine still appears in the society pages.

In 2010, she attends Chelsea Clinton's wedding in Rhinebeck, New York.

In 2014, New York journalist Richard Johnson reports that she's newly back from running in an Iditarod dogsled race in

Alaska. "It's hard to top
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Upon her return, the
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Alaska. "It's hard to top Ghislaine Maxwell in the globe-trotting department," he writes.

Upon her return, the president of the China Arts Foundation International hosts Maxwell at a dinner cooked by the former chef for Madame Chiang Kai-shek.

Sources say that Maxwell still maintains her warm relationship with the Clintons. She was never charged with a crime. And Maxwell has repeatedly denied all allegations made by Virginia Roberts—and continues to do so today. Through her lawyer, Maxwell says she's had no connection to any criminal misconduct involving Virginia Roberts (or any other young woman) and Jeffrey Epstein. She claims that Virginia's story about her experience as a "sex slave" has changed, significantly, over time—that with each telling, Virginia adds salacious details and names new public figures. Nevertheless, legal troubles for Maxwell recently began.

In 2015, Virginia Roberts filed a defamation suit against the woman she says recruited her to work at Epstein's house on El Brillo Way. In January of 2016, Roberts filed additional papers, claiming that a defamation suit filed against Bill Cosby, another alleged sexual predator, was directly relevant to her case against Maxwell. In March, Maxwell filed an answer in court denying all of Roberts's allegations and accusing Roberts of fabricating them for financial gain.

As of this writing, the suit is ongoing.

Prince Andrew

In January of 2016, Sunninghill Park—the twelve-bedroom estate that Sarah Ferguson and Prince Andrew once shared in the English county of Berkshire—was bulldozed.

Prince Andrew had long since sold the home, which he and Sarah had received as a gift after their 1986 wedding. He got into hot water when it was revealed that the buyer, a Kazakh billionaire named Timur Kulibayev, had paid three million pounds more than the home's asking price.

For her part, Sarah Ferguson announced that she was moving into a thirteen-million-pound ski chalet in Switzerland.

It was a fitting end to the long, sometimes sordid story of the prince's marriage. But it was not the end of the scandals that seemed always to be swirling around the prince.

On January 2, 2015, Virginia Roberts's allegations about her relationship with the prince—and the photo of him with his arm around Roberts's waist—appeared in the press. Prince Andrew was forced to cut short a skiing holiday to confer with his mother, the queen, and to issue a statement denying Roberts's allegations—a step that was widely seen as being without precedent for a member of the royal family.

That same month, at the World Economic Forum in Davos, Switzerland, the prince was again forced to "reiterate and to reaffirm" the repeated denials made by Buckingham Palace that he had any sort of sexual relationship with Roberts, who had announced in papers filed at the start of the year that Prince Andrew has a "sexual interest in feet."

"My focus is on my work," Prince Andrew said at the time.

Asked by a reporter, "Will you be making a statement?" the prince refused to answer.

A few days later, Virginia Roberts signed a sworn statement in which she said, "I did have sexual contact with him as I have described here—under oath. Given what he knows and has seen, I was hoping that he would simply voluntarily tell the truth about

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According to several reports, Roberts's lawyers had written to the prince, asking him to respond to her allegations in court. Reportedly, Buckingham Palace refused delivery of the letter.

"I knew he was a member of the British royal family, but I just called him 'Andy,'" Roberts had said in her statement. "I got news from Maxwell that I would be meeting a prince. Later that day, Epstein told me I was meeting a 'major prince.' Epstein told me 'to exceed' everything I had been taught. He emphasized that whatever Prince Andrew wanted, I was to make sure he got."

Signing her name to the document, Roberts wrote, "I declare under penalty of perjury that the foregoing is true and correct."

That spring, Prince Andrew got a rare break: a federal judge in South Florida ordered that the allegations Roberts made be stricken from civil-court records. "At this juncture in the proceedings, these lurid details are unnecessary," the judge concluded. Once again, Buckingham Palace vehemently denied the prince's involvement in any activities, sexual or otherwise, pertaining to Roberts. But that same year, reports leaked that the BBC program *Panorama* was working on an in-depth investigation into the prince's dealings with Epstein and Roberts.

As of this writing, the investigation has yet to air.

Barry Krischer

"I have no intention of being dragged into that conversation," Barry Krischer said in 2016 when contacted via telephone and asked about Jeffrey Epstein.

More than a decade had passed since Epstein's case first landed on the state attorney's desk.

"The *New York Times* has called me," said Krischer. "The British papers. I'm not interested in being pulled into that conversation. I know that the police chief didn't think the case was handled right, but that's why he's a cop and I'm a prosecutor."

Krischer, who left the state attorney's office in 2009, is still a member of the Criminal Justice Commission in Palm Beach County. Since his retirement, he's volunteered one morning a week at the office of the state attorney and two mornings a week at the Palm Beach County Sheriff's Office.

He still remains active in child welfare issues, working with the Florida Department of Children and Families.

Despite his continued involvement with local law enforcement, he hasn't spoken to Michael Reiter in years.

Bradley Edwards

In December of 2009, Jeffrey Epstein filed suit, under Florida's RICO act, against Scott Rothstein, the jailed Ponzi king; Bradley Edwards, the lawyer who'd worked, briefly, in Rothstein's law firm, RRA, and represented several of Epstein's victims; and one of those victims, an individual referred to in the lawsuit as "L.M."

"Upon information and belief," the suit stated, "EDWARDS knew or should have known that ROTHSTEIN was utilizing RRA as a front for the massive Ponzi scheme and/or were selling an alleged interest or investment in the Civil Actions (and other claims) involving Epstein." The suit also claimed that, "By using
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Civil Actions against EPSTEIN as 'bait' and fabricating settlements regarding same, ROTHSTEIN and others were able to lure investors into ROTHSTEIN'S lair and bilked them of millions of dollars which, in turn, was used to fund the litigation against EPSTEIN for the sole purpose of continuing the massive Ponzi scheme."

Moreover, the suit claimed, L.M. had "testified she never had sex with Epstein; worked at numerous strip clubs; is an admitted prostitute and call girl; has a history of illegal drug use (pot, painkillers, Xanax, Ecstasy); and continually asserted the 5th Amendment during her depositions in order to avoid answering relevant but problem questions for her." (The suit made similar claims about two other victims.) According to the suit, L.M. had said only good things about Epstein when interviewed by the FBI in 2007, while being represented by another lawyer. Her story "changed dramatically," the suit claimed, once she was "in the hands of EDWARDS and RRA."

In a motion for summary judgment filed by Bradley Edwards, Edwards denied all of these allegations, calling Epstein's claims frivolous for two separate reasons: On the one hand, Edwards claimed, Epstein was seeking damages from Edwards while asserting his own Fifth Amendment privilege to block the discovery of relevant facts. (And, in fact, Epstein did plead the Fifth, dozens of times, when deposed by the lawyers of his victims.) On the other hand, Epstein's claims were "directly contradicted by all of the record evidence.

"The truth in the record is entirely devoid of any evidence to support Epstein's claims and is completely and consistently corroborative of Edwards's sworn assertion of innocence," the motion stated.

> *Put simply, Epstein has made allegations that have no basis in fact. To the contrary, his lawsuit was merely a desperate measure by a serial pedophile to prevent being held accountable for repeatedly sexually abusing minor females. Epstein's ulterior motives in filing and prosecuting this lawsuit are blatantly obvious. Epstein's behavior is another clear demonstration that he feels he lives above the law and that because of his wealth he can manipulate the system and pay for lawyers to do his dirty work—even to the extent of having them assert baseless claims against other members of the Florida Bar. Epstein's Complaint against Edwards and LM is nothing short of a far-fetched fictional fairy-tale with absolutely no evidence whatsoever to support his preposterous claims. It was his last ditch effort to escape the public disclosure by Edwards and his clients of the nature, extent, and sordid details of his life as a serial child molester. Edwards's Motion for Summary Judgment should be granted without equivocation.*

Edwards filed a counterclaim for malicious prosecution. "He sued me with knowingly made up, falsified facts,' Edwards says.

> *And his sole motivation was to extort me into abandoning the legitimate cases I was pursuing against him on behalf of the victims, including the CVRA suit. He ultimately had to dismiss that case, literally on the morning our Summary Judgment was to be heard. I then sued him. We were set for trial. The judge granted me punitive damages in my claim. And then, in a separate case in Florida, one of the appellate*

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Sarah Kellen

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courts basically abolished the tort of malicious prosecution in Florida. My case was dismissed. I then appealed that. And our district ruled that my malicious prosecution claim can stand and the tort is not abolished in Florida. They sent it back to the trial court and Jeffrey Epstein appealed that to the State Supreme Court, and that's where that stands.

Sarah Kellen

"She said her name was Clara something on the rental application," says a real estate agent in Palm Beach. "It wasn't until much later that I realized she was associated with Epstein."

In April of 2009, that agent rented Clara a bungalow in Palm Beach. For Clara, that little home was a step down from Jeffrey Epstein's big house on El Brillo Way and from the life she'd known as Sarah Kellen. But not *such* a step down. "She signed a lease to pay four thousand dollars a month from April 18 through July 18, 2009," says a Palm Beach resident familiar with the local housing market. "But she stayed a lot longer. And by the way, she went on a round-the-world trip for at least a month while she had the lease."

Kellen had been a prime suspect in Chief Reiter's investigation. Prosecutors had considered charging her, Wendy Dobbs, and Nadia Marcinkova as potential coconspirators. They'd avoided those charges as part of the plea deal that Epstein had struck—a deal in the course of which it was suggested that if Epstein had to have pleaded to *something*, he could have pleaded to striking Kellen—or slapping her, once, on his jet. Assault, they'd have called it.

Kellen might have gone along with that. But in the end she didn't need to. Sources say she found another rich man as Epstein whiled away his hours in and out of the Palm Beach Stockade. She reinvented herself, and when her relationship with the wealthy man fell apart, she played the field until she met and married a race-car driver named Brian Vickers. Along the way she reinvented herself yet again, changing her name to Sarah Kensington.

Nadia Marcinkova

Nadia Marcinkova changed her surname to Marcinko and, after training at a Palm Beach flight school, became a commercial pilot and certified flight instructor. Calling herself Gulfstream Girl on Facebook, she cultivated her social media presence until 2013, when the Gulfstream company filed a trademark infringement lawsuit against her. When the suit was settled out of court, in 2014, Marcinko changed "Gulfstream" to "Global."

"As a child," she wrote for the "About Me" page on her website, "Nadia channeled her entrepreneurial spirit by selling invisible pets to neighboring kids. She continued on to manage a successful family marketing business and soon she was discovered by a modeling agency and immersed into the marketing and advertising world as a spokesperson and international fashion model."

There is no mention of Jeffrey Epstein. But on her YouTube channel, Marcinko appears in the cockpit of a Gulfstream II that looks very much like Epstein's Gulfstream, sitting beside a man who looks much like Larry Visoski, a pilot for Epstein.

Marcinko's Manhatta
Jeffrey Epstein's brother,
Sarah Kensington us

The Girls

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Marcinko's Manhattan address belongs to a building where Jeffrey Epstein's brother, Mark, owns the majority of apartments.

Sarah Kensington uses the same address in New York.

The Girls

One of the girls who gave Jeffrey Epstein massages moved to Los Angeles and became an actress, starring for a time in a soap opera and appearing in several films. She is now pursuing a career in country music.

Several girls have been arrested for drugs, prostitution, and other nonviolent crimes.

One girl is dead—murdered by her boyfriend for reasons that had nothing to do with Epstein.

One of the girls who claimed to have been raped by Epstein is now a successful real estate broker in South Florida.

Mary moved back in with her parents, finished high school, and attended college for a while. She had her ups and downs along the way. In 2010, she was arrested for shoplifting. But Mary, who was born in 1990, is still in her midtwenties—*still* young for a man of Jeffrey Epstein's age—with many good years ahead of her.

Wendy Dobbs studied nursing in college and became a bartender and waitress. "I want to fill a position in which I can [utilize] my communication and customer service skills to help others," she wrote on LinkedIn. "I feel I am at my best when I can make a difference in someone's life. My goal is to inspire and encourage others to make positive changes daily. If you are not reaching for the stars then your dreams are not big enough."

The Cops

Michele Pagan is now a sergeant for the Palm Beach Police Department.

In early 2012, at a reception at Mar-a-Lago, Detective Joe Recarey received the first Palm Beach Police Foundation Police Officer of the Year award—one of several honors he received in the course of his twenty-three-year career in Palm Beach. Two years later, he left the department and took a job as director of loss prevention for the Gold Coast Beverage company.

"I've been [at the Palm Beach Police Department] longer than my children have been alive," he told a reporter for the *Palm Beach Daily News* when he left. "I'm going to miss a majority of the people I've worked with, and, obviously, I'm going to miss the work. This is my extended family. Like many families, you have disagreements with some family members. But you overlook that, and you work together and you're a team. I'm going to look back and miss a lot of the people I've worked with."

Palm Beach police chief Michael Reiter left the department in 2008 after twenty-eight years on the job. He now runs his own security company in Palm Beach.

Jean-Luc Brunel

In January of 2015, Jean-Luc Brunel sued his old friend Jeffrey Epstein, claiming that Epstein's fall from grace had cost him millions of dollars in business and caused him "severe emotional stress."

The lawsuit claimed, "Plaintiff Brunel is emotionally destroyed

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Brunel is emotionally destroyed

as a result of Epstein's actions and the resulting effects on his business. He has been on medications to deal with the effects of this."

It continues: "Defendant Epstein recklessly inflicted emotional distress on Plaintiff Brunel by engaging in illegal conduct with under-aged girls, which was falsely linked to Plaintiff.... This illegal conduct was extreme and outrageous by any standard."

The suit went on to quote Brunel's doctor, who said that the modeling scout had gone into psychotherapy "due to a subjective sense of depression related to what he believes is a loss of business in his modeling agency as a result of slander published against his business." Brunel had gone on prescription drugs—Prozac, Rivotril—as a result.

The fashion world had frozen him out, he said, after his relationship with Jeffrey Epstein had become public. It had become impossible for him to find the "fresh faces" he needed for his agency, MC2.

Brunel acknowledged Epstein's alleged crimes but denied his own involvement. "Epstein's illegal activities were outrageous and extreme; they involved receiving massages from the under-aged girls while the girls were nude or nearly nude; penetration of the girls with a finger or object; or full intercourse."

When the *Daily Beast* reported the story and reached out to Brunel for a comment, the website's reporter was told, "Jean-Luc is not in town; he's in South America."

Brunel's agency, MC2, is still in business.

Jeffrey Epstein

As of this writing, Jeffrey Epstein continues to entertain young women at his Manhattan town house.

EPILOGUE

When John Connolly, Tim Malloy, and I began work on this book, I had hoped to interview Jeffrey Epstein myself: to look directly into the eyes of the man we'd be writing about. Epstein declined to sit for an interview. Many of his friends and associates did speak with us on the condition that they not be quoted. Several of them still liked Epstein and made a point of telling us what a loyal friend he was—although, like Icarus, he seemed to have a fatal flaw.

If Epstein had agreed to an interview, these are the questions I would have asked him:

- You pleaded guilty to a single felony count of soliciting prostitution from a minor. Do you believe in your heart that you were guilty?
- In 2011 you told the *New York Post*, "I'm not a sexual predator, I'm an 'offender.' It's the difference between a murderer and a person who steals a bagel." Do you stand by that statement today?

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- Do you feel you were treated fairly by the criminal justice system?
- What effect did your conviction have on your business?
- Do you believe that you've done psychological harm to the women—especially the underage girls—you've been involved with?
- Are you still in touch with Ghislaine Maxwell?
- Are you in touch with Prince Andrew?
- You've spent time with Bill Clinton as well as Donald Trump. How would you characterize the two men?
- Several people have described you as a very loyal friend. Is that a fair characterization?
- I've heard that Leslie Wexner removed all photographs of you from his home. Given how close you once were, have you reconciled or tried to repair the relationship?
- Did the thirteen months you spent in jail change you in any way?
- After your stay in prison, have you continued to seek the company of very underage women?
- You were ordered to undergo psychological treatment as part of your sentence. Are you under treatment today?
- Do you regard yourself as having a sex addiction, and, if so, have you been treated for it?
- What is your greatest regret?
- What do you look for in a woman?
- Last question. How well do you sleep at night?

ABOUT THE AUTHORS

James Patterson received the Literarian Award for Outstanding Service to the American Literary Community at the 2015 National Book Awards ceremony. He holds the Guinness World Record for the most number one *New York Times* bestsellers, and his books have sold more than 325 million copies worldwide.

John Connolly has been an investigative reporter for twenty-five years, the last twelve of them with *Vanity Fair.* He has written scores of nonfiction pieces for numerous national magazines.

Tim Malloy is a thirty-year veteran of print and television journalism. He has won eight Emmys as an investigative reporter, documentary maker, and war correspondent. He appears in print, on the Web, and on TV as a political analyst.

"I HAD BEEN HEARING HAIR-RAISING STORIES about Jeffrey Epstein for a couple of years. Our interests could not have been more different, but Palm Beach, where we both live, is small and tightly knit, and we knew some of the same people. So I had followed Epstein's case in the media and talked about it over dinners with friends. I wondered why it had taken so long for the Palm Beach police to catch up with Epstein. And, once they did, why he had served so little jail time. Those were the obvious questions, but there were others: How had Epstein made his money, possibly billions? No one seemed to know.

Epstein had powerful friends. Were his connections the reason that Epstein was now a free man? I wanted to know."

ISBN 978-0-316-27405-0
52800 >
EAN
9 780316 274050

From: [redacted] <[redacted]>
Sent: Thursday, October 13, 2016 6:08 PM
To: JEE
Subject: Fwd: CNN Inquiry

Importance: High

Fyi

Sent from my iPhone

Begin forwarded message:

> **From:** Melanie Hicken <hit-reply@linkedin.com>
> **Date:** October 13, 2016 at 8:03:22 PM GMT+2
> **To:** [redacted] <[redacted]>
> **Subject: CNN Inquiry**
> **Reply-To:** Melanie Hicken <59d7d715-38e6-4332-9945-5076dffc7f28@reply.linkedin.com>
>
> Hi [redacted],
>
> I'm a reporter at CNN, and my colleague Blake Ellis and I have read that Bill Clinton and Donald Trump have both visited Epstein's private island. We are trying to determine whether there is any truth to the allegations that either or both of these men may have had sexual relations with minors while there. We know that you have been Epstein's pilot, so we're wondering if you would be willing to speak with us completely off the record. We are not focusing on the allegations against Epstein -- we are solely focusing on Trump and Clinton given the current allegations being levied in the press.
>
> If you don't feel comfortable sharing anything via social media or email, feel free to send us any documentation/proof that might be helpful anonymously via mail:
>
> Melanie Hicken
> 6430 Sunset Blvd #300
> Los Angeles, CA 90028
>
> You can also reach us by phone: [redacted]
>
> Thanks so much,
> Melanie
>
> Reply Not interested
>
> View Melanie's LinkedIn profile
>
> ---
>
> You are receiving InMail notification emails. Unsubscribe

This email was intended for [redacted] ([redacted]). Learn why we included this.

If you need assistance or have questions, please contact LinkedIn Customer Service.

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From: [redacted] <[redacted]>
Sent: Friday, November 11, 2016 2:06 AM
To: jeffrey E.
Subject: Re:

Importance: High

I saw that, amazing.
I also think it's shocking she is 35 in the recent picture (if she was 13 in '94). She looks 20 years older.

From: jeffrey E. <jeevacation@gmail.com>
To: [redacted] <[redacted]>
Sent: Thursday, November 10, 2016 5:01 PM
Subject:

http://www.dailymail.co.uk/news/article-3914012/Troubled-woman-history-drug-use-claimed-assaulted-Donald-Trump-Jeffrey-Epstein-sex-party-age-13-FABRICATED-story.html

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From: jeffrey E. <jeevacation@gmail.com>
Sent: Friday, January 9, 2015 7:00 PM
To: [redacted]
Subject: Re: we'll see

Importance: High

It was a first draft

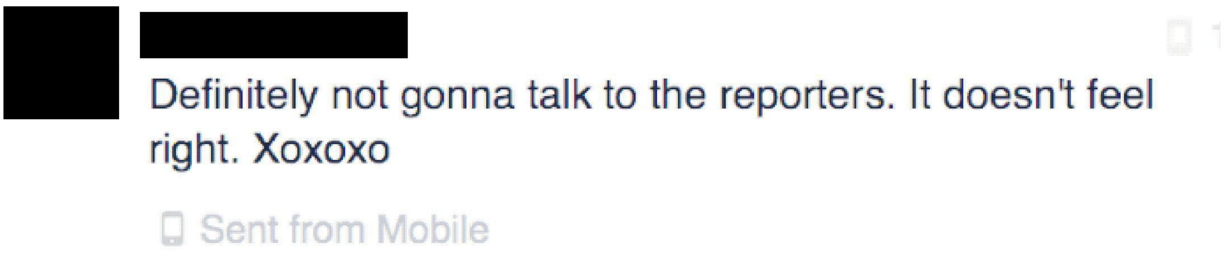
On Friday, January 9, 2015, [redacted]> wrote:

> Yes, let's do it. I like most of it. Would like less personal attacks and more reasons why allegations are ridiculous..
>
> Love the fact checking story. Just a few days ago, I toyed with the idea of posting a photo of me doing a preflight inspection and saying I wished other professions would have that requirement before putting innocent people's lives at risk.
>
> ---
>
> **From:** jeffrey E. <jeevacation@gmail.com>
> **To:** [redacted]
> **Sent:** Friday, January 9, 2015 1:44 PM
> **Subject:** Re: we'll see
>
> I only met Jeffrey Epstein, after I was adult. (over 18). I was never, ever, his " sex slave " . obviously a lurid chauvenistic categorization. which in my opinion could only have been made by some loser of a repressed male reporter. He was always kind , funny and generous to me . These fantasy fabrications made by a delusional thief. (charged with stealing from the burger place and which she worked, though she claimed to paid thousands of dollars in cash and held at the beck and call of the genious tycoon.) . Her story telling had it been done while sleeping would have been called dreaming, if awake, hallucinaitons but to the English press they are referred to as allegations . She claimed in the minutest of detail , her dinner with President Clinton on the Caribean Island, How he arrived . (by black heli). where he sat. ,(on jeffreys left.) a 21st century tale of power , sex , money . The fact is that this story is total make believe , fabricated on purpose to gain tabloid attention ,and easily refuted by readily availalble travel records of a former president. . it defies belief that any person would take seriously such a preposterous story. little different than her telling her father that she met the queen, whoops- he believed her though her mother at the relevant time complained that she must have been engaging in satan worship and asked that she be put her in a drug home. cmon. I am currenty a professional pilot with a spotless record. I have a checklist that I follow before every flight to verify that things are what they are supposed to be , checking her story which the presss has refused to do would serve the public well. In this case human error is merely a euphmisn for hijacking the truth ,
>
> On Fri, Jan 9, 2015 at 2:10 PM, [redacted] wrote:
>
> > Apparently..
> >
> > They are now asking how my parents bought a building in town...implying it was all the money they got for selling me :)
> > Getting ugly..
> >
> > ---
> >
> > **From:** jeffrey E. <jeevacation@gmail.com>
> > **To:** [redacted]

Sent: Friday, January 9, 2015 12:50 PM
Subject: Re: we'll see

notable?

On Fri, Jan 9, 2015 at 1:44 PM, [redacted] wrote:



[redacted] [redacted]

Definitely not gonna talk to the reporters. It doesn't feel right. Xoxoxo

Sent from Mobile

They called my friend [redacted] today and told her they are writing a story about notable people from the east and would like to talk to her about me. She didn't fall for it.. Slovakian press is going crazy now.

--
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From: jeffrey E. <jeevacation@gmail.com>
Sent: Friday, January 9, 2015 7:19 PM
To: [redacted]
Subject: Re: we'll see

Importance: High

Normally it's the copilots job to call out [redacted], in this instance I'm calling her out)):

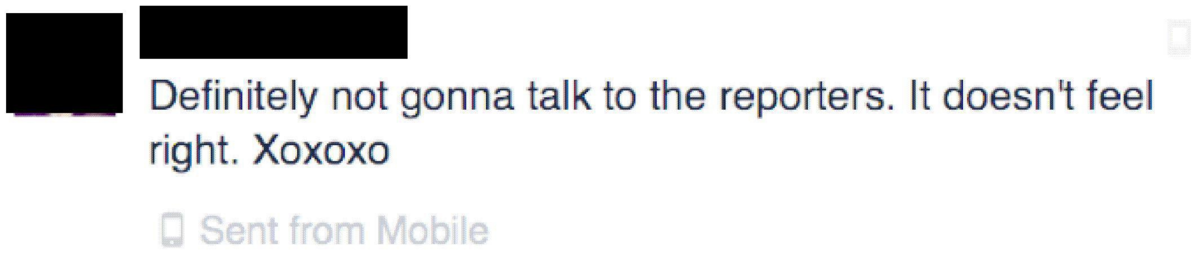
On Friday, January 9, 2015, [redacted] wrote:

> I know, I like where it's going..
>
> ---
>
> **From:** jeffrey E. <jeevacation@gmail.com>
> **To:** [redacted]
> **Sent:** Friday, January 9, 2015 1:59 PM
> **Subject:** Re: we'll see
>
> It was a first draft
>
> On Friday, January 9, 2015, [redacted] wrote:
>
> > Yes, let's do it. I like most of it. Would like less personal attacks and more reasons why allegations are ridiculous..
> >
> > Love the fact checking story. Just a few days ago, I toyed with the idea of posting a photo of me doing a preflight inspection and saying I wished other professions would have that requirement before putting innocent people's lives at risk.
> >
> > ---
> >
> > **From:** jeffrey E. <jeevacation@gmail.com>
> > **To:** [redacted]
> > **Sent:** Friday, January 9, 2015 1:44 PM
> > **Subject:** Re: we'll see
> >
> > I only met Jeffrey Epstein, after I was adult. (over 18). I was never, ever, his " sex slave " . obviously a lurid chauvenistic categorization. which in my opinion could only have been made by some loser of a repressed male reporter. He was always kind , funny and generous to me . These fantasy fabrications made by a delusional thief. (charged with stealing from the burger place and which she worked, though she claimed to paid thousands of dollars in cash and held at the beck and call of the genious tycoon.) . Her story telling had it been done while sleeping would have been called dreaming, if awake, hallucinaitons but to the English press they are referred to as allegations . She claimed in the minutest of detail , her dinner with President Clinton on the Caribean Island, How he arrived . (by black heli). where he sat. ,(on jeffreys left.) a 21st century tale of power , sex , money . The fact is that this story is total make believe , fabricated on purpose to gain tabloid attention ,and easily refuted by readily availalble travel records of a former president. . it defies belief that any person would take seriously such a preposterous story. little different than her telling her father that she met the queen, whoops- he believed her though her mother at the relevant time complained that she must have been engaging in satan worship and asked that she be put her in a drug home. cmon. I am currenty a professional pilot with a spotless record. I have a checklist that I follow before every flight to verify

that things are what they are supposed to be , checking her story which the presss has refused to do would serve the public well. In this case human error is merely a euphmisn for hijacking the truth

,

On Fri, Jan 9, 2015 at 2:10 PM, [redacted] wrote:

> Apparently..
>
> They are now asking how my parents bought a building in town...implying it was all the money they got for selling me :)
> Getting ugly..
>
> ---
>
> **From:** jeffrey E. <jeevacation@gmail.com>
> **To:** [redacted]
> **Sent:** Friday, January 9, 2015 12:50 PM
> **Subject:** Re: we'll see
>
> notable?
>
> On Fri, Jan 9, 2015 at 1:44 PM, Nadia <nadja2102@yahoo.com> wrote:
>
> 
>
> [redacted] [redacted]
>
> Definitely not gonna talk to the reporters. It doesn't feel right. Xoxoxo
>
>
>
> They called my friend [redacted]today and told her they are writing a story about notable people from the east and would like to talk to her about me. She didn't fall for it.. Slovakian press is going crazy now.
>
> --
>
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From: jeffrey E. <jeevacation@gmail.com>
Sent: Friday, January 9, 2015 9:03 PM
To: [redacted]
Subject: Re: we'll see

sexy cute

On Fri, Jan 9, 2015 at 4:50 PM, [redacted] wrote:

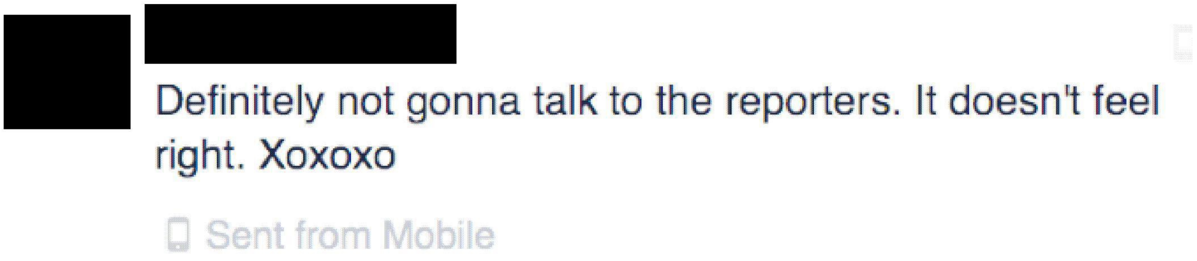
> I know, cute,, just a joke about people's unique sensitivities. You must have heard many this week. How are You doing?
>
> ---
>
> **From:** jeffrey E. <jeevacation@gmail.com>
> **To:** [redacted]
> **Sent:** Friday, January 9, 2015 3:15 PM
> **Subject:** Re: we'll see
>
> it was only meant as a pun on [redacted]
>
> On Fri, Jan 9, 2015 at 3:26 PM, [redacted] <[redacted]> wrote:
>
>> I'm a pilot...I prefer sex slave to copilot ;)
>>
>> ---
>>
>> **From:** jeffrey E. <jeevacation@gmail.com>
>> **To:** [redacted]
>> **Sent:** Friday, January 9, 2015 2:18 PM
>> **Subject:** Re: we'll see
>>
>> Normally it's the copilots job to call out [redacted], in this instance I'm calling her out)):
>>
>> On Friday, January 9, 2015, [redacted] wrote:
>>
>>> I know, I like where it's going..
>>>
>>> ---
>>>
>>> **From:** jeffrey E. <jeevacation@gmail.com>
>>> **To:** [redacted]
>>> **Sent:** Friday, January 9, 2015 1:59 PM
>>> **Subject:** Re: we'll see
>>>
>>> It was a first draft
>>>
>>> On Friday, January 9, 2015, [redacted] wrote:
>>>
>>>> Yes, let's do it. I like most of it. Would like less personal attacks and more reasons why allegations are ridiculous..
>>>>
>>>> Love the fact checking story. Just a few days ago, I toyed with the idea of posting a photo of me doing a preflight inspection and saying I wished other professions would have that requirement before putting innocent people's lives at risk.

From: jeffrey E. <jeevacation@gmail.com>
To: [redacted]
Sent: Friday, January 9, 2015 1:44 PM
Subject: Re: we'll see

I only met Jeffrey Epstein, after I was adult. (over 18). I was never, ever, his " sex slave " . obviously a lurid chauvenistic categorization. which in my opinion could only have been made by some loser of a repressed male reporter. He was always kind , funny and generous to me . These fantasy fabrications made by a delusional thief. (charged with stealing from the burger place and which she worked, though she claimed to paid thousands of dollars in cash and held at the beck and call of the genious tycoon.) . Her story telling had it been done while sleeping would have been called dreaming, if awake, hallucinaitons but to the English press they are referred to as allegations . She claimed in the minutest of detail , her dinner with President Clinton on the Caribean Island, How he arrived . (by black heli). where he sat. ,(on jeffreys left.) a 21st century tale of power , sex , money . The fact is that this story is total make believe , fabricated on purpose to gain tabloid attention ,and easily refuted by readily availalble travel records of a former president. . it defies belief that any person would take seriously such a preposterous story. little different than her telling her father that she met the queen, whoops- he believed her though her mother at the relevant time complained that she must have been engaging in satan worship and asked that she be put her in a drug home. cmon. I am curreny a professional pilot with a spotless record. I have a checklist that I follow before every flight to verify that things are what they are supposed to be , checking her story which the presss has refused to do would serve the public well. In this case human error is merely a euphmisn for hijacking the truth ,

On Fri, Jan 9, 2015 at 2:10 PM, [redacted] wrote:

> Apparently..
>
> They are now asking how my parents bought a building in town...implying it was all the money they got for selling me :)
> Getting ugly..
>
> ---
>
> **From:** jeffrey E. <jeevacation@gmail.com>
> **To:** Nadia <nadja2102@yahoo.com>
> **Sent:** Friday, January 9, 2015 12:50 PM
> **Subject:** Re: we'll see
>
> notable?
>
> On Fri, Jan 9, 2015 at 1:44 PM, [redacted] wrote:



[redacted]

[redacted]

Definitely not gonna talk to the reporters. It doesn't feel right. Xoxoxo

Sent from Mobile

They called my friend [redacted] today and told her they are writing a story about notable people from the east and would like to talk to her about me. She didn't fall for it.. Slovakian press is going crazy now.

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From: jeffrey E. <jeevacation@gmail.com>
Sent: Tuesday, January 20, 2015 12:14 AM
To: [redacted]
Subject: your statement?

Importance: High

I have to hand it to [redacted] I'm sure she deserves the pretty penny she has made for her effort . She has certainly caught the imagination of a public hungry for salacious fiction. To suggest her story is anything other than that, a fiction , is ludicrous. Presidents at dinner on caribean islands. (clinton was never ever there, easy to confirm). Sharing a bath with a Prince (bathtub too small even for one adult). sex slave being paid thousands of dollars. (while at the exact same time, she was working as a hostess in a burger bar). being lent out to a prime minister though this prime mininster, never out of sight of his massive security detail also never visited the island, , sex on a small airplane with a famous lawyer while the other passengers must have been all looking out the window during the event . I would have thought that her fabrications were readilly apparent , but now , being asked to deny what the press has termed her " allegations " is frankly silly. ok, to play along I deny each and every allegation . The only person she didn't suggest she was forced to have sex with , was Bilbo Baggins. , maybe its in the sequel.

--

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From: Al seckel [[redacted]]
Sent: 12/11/2010 9:01:17 PM
To: Jeffrey Epstein [jeevacation@gmail.com]
Subject: Screen shot

Importance: High

This is a screen shot of a google search on your name taken about one minute ago, and this is BEFORE the next big sweep. I UNDERSTAND your point about "one thing kills me," but the daily beast article is gone, the other ones, including the powerful Huffington Post, are about to be pushed off. And, out stuff is on top.

Top of Form

× Search Instant is on ▼

Bottom of Form

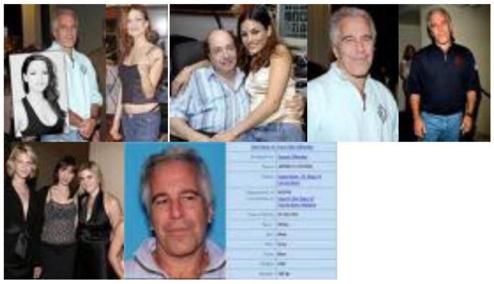
Web Images Videos Maps News Shopping Gmail more ▼

Web History | Search settings | Sign in

Advanced search
About 324,000 results (0.21 seconds)

Search Results

1. **Jeffrey Epstein** - Wikipedia, the free encyclopedia
Jeffrey Edward **Epstein** (born January 20, 1953 in Coney Island, New York) is a Jewish-American financier and philanthropist. **Epstein** was raised in Coney **...**
Philanthrophic Work - The Epstein Foundation - Promotion of Scientists
en.wikipedia.org/wiki/**Jeffrey_Epstein** - Cached - Similar
►
2. Images for **jeffrey epstein**
 - Report images



3. **Jeffrey Epstein**: International Moneyman of Mystery
He's pals with a passel of Nobel Prize–winning scientists, CEOs like Leslie Wexner of the Limited, socialite Ghislaine Maxwell, even Donald Trump.
nymag.com/nymetro/news/people/n_7912/ - Cached - Similar

4. **Jeffrey Epstein** | Profiles in Science
Jeffrey Epstein presents some of the greatest minds and finest scientists working today.
www.**jeffreyepstein**science.com/ - Cached

5. **Jeffrey Epstein**, MD, FACS, Miami, New York Hair Transplant Surgeon
Dr. **Epstein** and the hair transplant surgeons at the Foundation for Hair Restoration are experts in the field of hair restoration. Dr. **Epstein** is one of the **...**
www.foundhair.com/pages/about.shtml - Cached - Similar

6. **Jeffrey Epstein** - Blackboard
Jul 21,
2010 **...** **Jeffrey** Edward **Epstein** in a hedge fund mogul and convicted sex offender from New York. Born in Coney Island, he attended Lafayette High **...**
www.businessinsider.com/blackboard/**jeffrey-epstein** - Cached

7. **Jeffrey Epstein**, Convicted Pedophile And Former Hedge Fund Titan **...**
Jul 21, 2010 **...** **Jeffrey Epstein**, the former hedge fund manager who pleaded guilty to soliciting an underage girl for prostitution, is now free of the **...**
www.huffingtonpost.com/.../**jeffrey-epstein-**
disgraced_n_654674.html - Cached

> 8. **Jeffrey Epstein** on Sports
> An old school look at today's sport's world focusing on professional basketball and football by**Jeffrey Epstein**.
> www.**jeffreyepstein**sports.com/ - Cached
> 9. **Jeffrey Epstein** | Philanthropy
> **Jeffrey Epstein** has three main philanthropic and charitable organizations he uses to fund arts, sciences, research and other causes.
> www.**jeffreyepstein**.org/ - Cached
> 10. About **Jeffrey Epstein**
> **Jeffrey Epstein** is a financial mogul, hedge fund manager and philanthropist.
> www.**jeffreyepstein**.org/about**jeffreyepstein**.html - Cached
>
> Show more results from jeffreyepstein.org
> 11. Sex Offender **Jeffrey Epstein** Is Not A Billionaire - Billions **...**
> **Jeffrey Epstein**, the underage massage king of Palm Beach, was back in the headlines this week: "Billionaire pedophile goes free," (Daily **...**
> blogs.forbes.com/.../is-billionaire-sex-offender-**jeffrey**-**epstein**-all-that-rich/ - Cached
> Searches related to **jeffrey epstein**

From: Jeffrey Epstein <jeevacation@gmail.com>
To: Al seckel <[redacted]>
Sent: Sat, December 11, 2010 12:31:16 PM
Subject:

the google page is not good.. after sept when you told me you thought it would take approx twenty thousand to clean up. and hopefully in time for nov 1. then another ten thsousand , and another ten thousand. and your emails about how you are all about results ,, then an emergency 2500 dollars to keep servers active , then you told me micahel didn't want to give his bank details.. your quote was he'd explode, that was after he was sent forty thousand dollars directly to his bank.. I have yet to have a complete breakdown of payments. and the results , are what they are,.

--
****

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Jeffrey Epstein

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From: Al seckel [[redacted]]
Sent: 12/16/2010 9:28:38 PM
To: Jeffrey Epstein [jeevacation@gmail.com]
Subject: Latest screen shot

Importance: High

This is the latest screenshot. Mike managed to knock out daily beast again. She is a pain and very very persistent. We managed to push Huffington post down near bottom and is about to be pushed off, but it would take a bit more work, and again, you have your active detractors out there. Just the way it is.

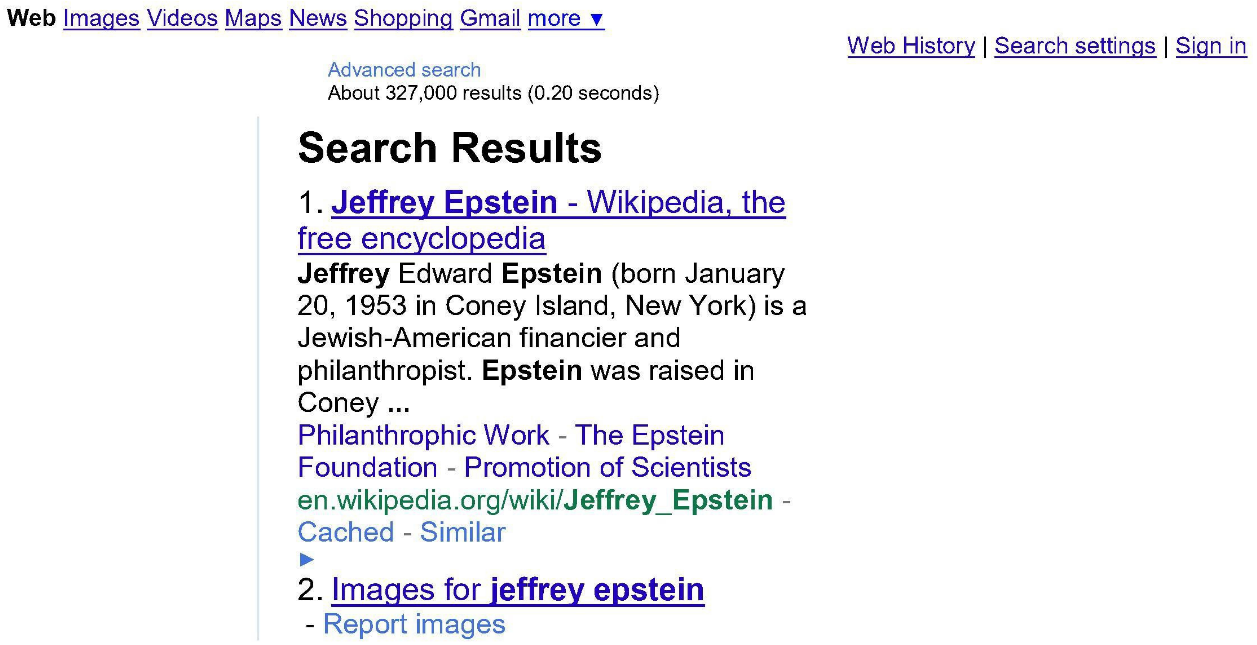
On the second page, we have replaced 8 toxic references with good ones, and there are four toxic ones left, which were pushed off the first page.

The science and org sites would have been placed higher if there was new content created and added.

Mike, however, is stopping work now on the project.

We need to talk about island asap, as they are bugging me for logistics.

Thanks.
me


Web Images Videos Maps News Shopping Gmail more ▼
Web History | Search settings | Sign in
Advanced search

About 327,000 results (0.20 seconds)

Search Results

1. **Jeffrey Epstein** - Wikipedia, the free encyclopedia
Jeffrey Edward **Epstein** (born January 20, 1953 in Coney Island, New York) is a Jewish-American financier and philanthropist. **Epstein** was raised in Coney **...**
Philanthrophic Work - The Epstein Foundation - Promotion of Scientists
en.wikipedia.org/wiki/**Jeffrey_Epstein** - Cached - Similar
▸
2. Images for **jeffrey epstein**
 - Report images

3. **Jeffrey Epstein**: International Moneyman of Mystery
He's pals with a passel of Nobel Prize–winning scientists, CEOs like Leslie Wexner of the Limited, socialite Ghislaine Maxwell, even Donald Trump.
nymag.com/nymetro/news/people/n_7912/ - Cached - Similar

4. **Jeffrey Epstein** | Profiles in Science
Jeffrey Epstein presents some of the greatest minds and finest scientists working today.
www.**jeffreyepstein**science.com/ - Cached

5. **Jeffrey Epstein** on Sports
An old school look at today's sport's world focusing on professional basketball and football by**Jeffrey Epstein**.
www.**jeffreyepstein**sports.com/ - Cached

6. **Jeffrey Epstein**, MD, FACS, Miami, New York Hair Transplant Surgeon
Dr. **Epstein** and the hair transplant surgeons at the Foundation for Hair Restoration are experts in the field of hair restoration. Dr. **Epstein** is one of the **...**
www.foundhair.com/pages/about.shtml - Cached - Similar

7. **Jeffrey Epstein** | Philanthropy
Jeffrey Epstein has three main philanthropic and charitable organizations he uses to fund arts, sciences, research and other causes.
www.**jeffreyepstein**.org/ - Cached

8. About **Jeffrey Epstein**
Jeffrey Epstein is a financial mogul, hedge fund manager and philanthropist.
www.**jeffreyepstein**.org/about**jeffreyepstein**.html - Cached

Show more results from
jeffreyepstein.org

9. Edge: **JEFFREY EPSTEIN**

JEFFREY E. **EPSTEIN** is a money manager and science philanthropist who currently serves as the Chairman and Chief Executive Officer of the Financial Trust **...**

www.edge.org/3rd_culture/bios/**epstein**.html - Cached - Similar

10. **Jeffrey Epstein**, Convicted Pedophile And Former Hedge Fund Titan **...**

Jul 21, 2010 **... Jeffrey Epstein**, the former hedge fund manager who pleaded guilty to soliciting an underage girl for prostitution, is now free of the **...**

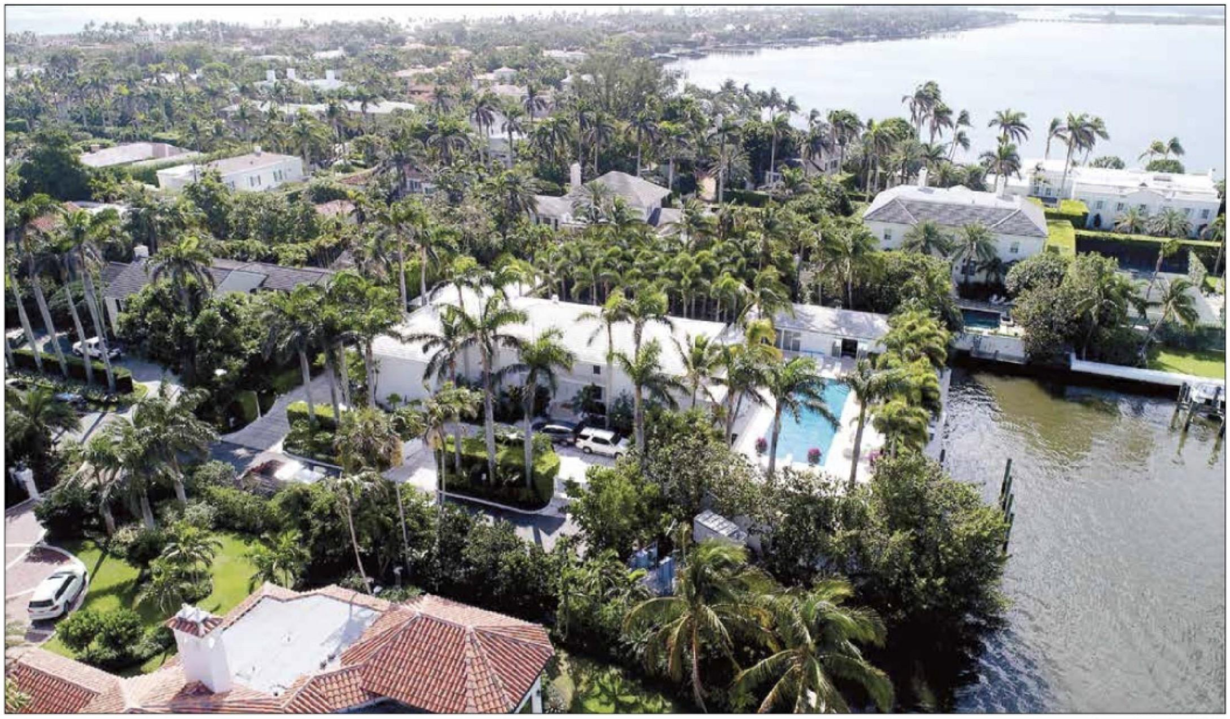
www.huffingtonpost.com/.../**jeffrey-epstein**-disgraced_n_654674.html - Cached

11. Dr. **Jeffrey Epstein**, MD, FACS | Board Certified Plastic Surgeon **...**

Dr. **Jeffrey Epstein** has been in solo private practice in Miami since 1994, and New York City since 2005, and is a Clinical Professor at the University of **...**

www.justformenplasticsurgery.com/AboutDr**Epstein**.asp - Cached - Similar

Searches related t



The home of Jeffrey Epstein has a large waterfront footprint in the Town of Palm Beach, not far from President Trump's Mar-a-Lago.

File photo by MIAMI HERALD

PERVERSION

CONTINUED FROM PAGE 12

the entire block on 71st Street between Fifth and Madison avenues.

He also owns a 10,000-acre ranch, named "Zorro," in New Mexico, a private island called "Little St. James" in the Virgin Islands, the $13 million house in Palm Beach, a Gulfstream jet and, at one point, owned a Boeing 727.

He has never been in the Forbes 400 list of the wealthiest Americans, largely because the magazine has never been able to determine the source or the size of his wealth.

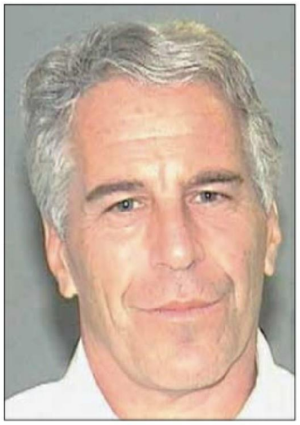
He has been dogged by questions about his financial dealings. A former business partner, Steven Hoffenberg, sued him in 2016, claiming that Epstein was the mastermind behind a $500 million Ponzi scheme that Hoffenberg was imprisoned for in 1995.

Hoffenberg served 18 years for the scam, but he later dropped the lawsuit against Epstein.

In August, two of Hoffenberg's former investors rekindled the lawsuit against Epstein, but the case was dropped in October.

Epstein and his associate, British-born socialite Ghislaine Maxwell, were also accused in a 2015 federal civil suit of organizing underage sex parties on his private plane, nicknamed "The Lolita Express," and at Epstein's various homes.

Maxwell, who has never been charged with wrongdoing, has denied allegations made in the lawsuit that she was Epstein's "madam." The suit, filed by victim Virginia Roberts, was settled in 2017.



Jeffrey Epstein

It was Epstein's contacts with powerful and famous people that first propelled him into the public spotlight. In 2002, he flew former President Bill Clinton, actor Kevin Spacey, comedian Chris Tucker and others to South Africa on his private jet as part of a fact-finding AIDS mission in support of the Clinton Foundation.

But Epstein, a Clinton donor who contributed hundreds of thousands of dollars to Democratic candidates and causes, realized that his Democratic connections weren't going to help him in 2006, when the federal prosecutor was Acosta, a conservative Republican appointed during the George W. Bush administration.

All-star attorneys

Epstein's tactic: hire the most aggressive and politically connected lawyers that his money could buy.

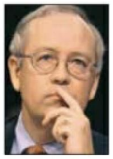
At the top of his list: Kenneth Starr, a Republican icon because of his pursuit of Bill Clinton during the Whitewater investigation, which led to the impeachment (but not conviction) of the president after it was revealed he'd had sex with a young White House intern.

Like Acosta, Starr had worked at the prestigious law firm Kirkland & Ellis. Epstein also tapped Jay Lefkowitz, also of Kirkland, who worked as a domestic policy adviser and later as a special envoy to North Korea during the George W. Bush presidency.

Epstein also hired Bruce Reinhart, then an assistant U.S. attorney in Palm Beach.

Reinhart, now a U.S. magistrate, left the U.S. Attorney's Office on Jan. 1, 2008, and went to work representing Epstein's employees on Jan. 2, 2008, court records show.

In 2011, Reinhart was named in the Crime Victims' Rights Act lawsuit, which accused him of violating Justice Department policies by switching sides, implying that he leveraged inside information about Epstein's investigation to curry favor with Epstein.



Kenneth Starr

Reinhart, in a sworn declaration attached to the Crime Victims' Rights Act case, denied the allegation, saying he did not participate in Epstein's criminal case and "never learned any confidential, non-public information about the Epstein matter."

The U.S. Attorney's Office has since disputed that, saying in court papers that he did possess confidential information about the case.

Contacted for this story, Reinhart, in an email, said he never represented Epstein — only Epstein's pilots; his scheduler, Sarah Kellen; and Nadia Marcinkova, described by some victims as Epstein's sex slave. Reinhart also pointed out that a complaint filed against him by victims' lawyer Paul Cassell was dismissed by the

See **PERVERSION,** next page

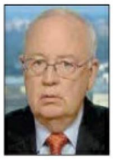
Federal prosecutors admit backing down

Epstein's attorneys applied relentless pressure, they say

By JULIE K. BROWN
Miami Herald

In recent court filings, the government was forced to answer questions about its negotiations, finally admitting in 2013 that federal prosecutors had backed down under relentless pressure by Jeffrey Epstein's attorneys.

"The government admits that, at least in part as a result of objections lodged by Epstein's lawyers to victim notifications, the [United States Attorney's Office] reevaluated its obligations to provide notification to victims and Jane Doe #1 was thus not told that the USAO had entered into a non-prosecution agreement with Epstein until after it was signed," wrote Assistant U.S. Attorney Dexter Lee.


Kenneth Starr

Said Francey Hakes, the former federal prosecutor: "I have never heard of a case where federal prosecutors consult with a defense attorney before they send out standard victim notification letters. To negotiate what the letters would say and whether they would be sent at all suggest that the victims' rights were violated multiple times."

Kenneth Starr's aggressive advocacy for Epstein against allegations of improper sexual behavior was in stark contrast to the path he took investigating President Bill Clinton as independent counsel for the Whitewater probe.

The Starr Report, the summary of his findings in the Whitewater investigation, which started as a probe of a land deal gone sour and veered into an investigation of sexual misconduct, savaged the president for his involvement with White House intern Monica Lewinsky and was the basis for impeachment.

Starr himself would face criticism in 2016 — he stepped down as president of Baylor University amid allegations that he and other university officials mishandled sexual assault allegations brought by female students against members of the school's football team.

The Miami Herald reached out to Starr, through certified letter and through a spokesman for his current law firm, the Lanier Firm, but did not receive a response for this story.

Palm Beach police detective Joseph Recarey, one of the most highly decorated officers on the Palm Beach Police Department, called the Epstein case the most troubling of his 23-year career.

"Some of the victims were — and still are — afraid of Epstein," he said as part of a series of interviews with the Herald earlier this year.

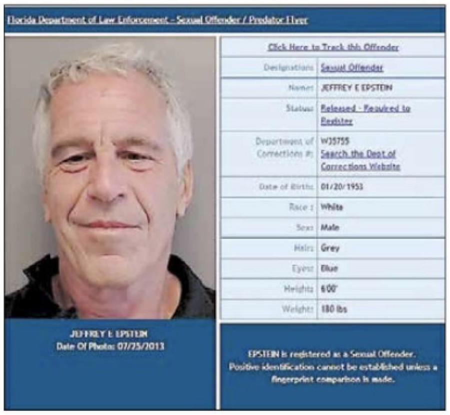
Privately, Michael Reiter and Recarey said they held onto hope that Epstein would be brought to trial someday, but they said that that notion had faded.

"I always hoped that the plea would be thrown out and that these teenage girls, who were labeled as prostitutes by prosecutors, would get to finally shed that label and see him go to prison where he belongs," Recarey said.

Recarey died in May after a brief illness. He was 50 years old.

File photo by MIAMI HERALD

After he pleaded guilty in state court, Jeffrey Epstein was assigned to a private section of the Palm Beach County stockade. Soon, however, he was allowed to leave the compound six days a week, 12 hours a day, for what was termed work release.


Florida Department of Law Enforcement - Sexual Offender / Predator Flyer

Click Here to Track this Offender

Designations	Sexual Offender
Name:	JEFFREY E EPSTEIN
Status:	Released - Required to Register
Department of Corrections #:	W35755 Search the Dept of Corrections Website
Date of Birth:	01/20/1953
Race :	White
Sex:	Male
Hair:	Grey
Eyes:	Blue
Height:	6'00"
Weight:	180 lbs

JEFFREY E EPSTEIN
Date Of Photo: 07/25/2013

EPSTEIN is registered as a Sexual Offender. Positive identification cannot be established unless a fingerprint comparison is made.

Jeffrey Epstein, accused of sexually abusing dozens of underage women, grins for his mugshot on Florida's sex offender registry. He once compared his crimes to "stealing a bagel."

Photo by FLORIDA SEX OFFENDER REGISTRY

Epstein's sentencing hearing

Jeffrey Edward Epstein appeared at his sentencing on June 30, 2008 at the Palm Beach County Courthouse dressed comfortably in a blue blazer, blue shirt, jeans and gray sneakers. His attorney, Jack Goldberger, was at his side.

At the end of the 68-minute hearing, the 55-year-old silver-haired financier — accused of sexually abusing dozens of underage girls — was fingerprinted and handcuffed, just like any other criminal sentenced in Florida.

But inmate No. W35755 would not be treated like other convicted sex offenders in the state of Florida, which has some of the strictest sex offender laws in the nation.

Ten years before the #MeToo movement raised awareness about the kid-glove handling of powerful men accused of sexual abuse, Epstein's lenient sentence and his extraordinary treatment while in custody are still the source of consternation for the victims he was accused of molesting when they were minors.

Beginning as far back as 2001, Epstein lured a steady stream of underage girls to his Palm Beach mansion to engage in nude massages, masturbation, oral sex and intercourse, court and police records show.

The girls — mostly from disadvantaged families — were recruited from middle schools and high schools around Palm Beach County. Epstein would pay the girls for massages and offer them further money to bring him new girls every time he was at his home in Palm Beach, according to police reports.

The girls, now in their late 20s and early 30s, allege in a series of federal civil lawsuits filed during the last decade that Epstein sexually abused hundreds of girls, not only in Palm Beach, but at his homes in Manhattan, New Mexico and on Little St. James island in the U.S. Virgin Islands.

Special treatment in prison

In 2007, the FBI had prepared a 53-page federal indictment charging Epstein with sex crimes that could have put him in federal

See **PERVERSION,** next page

Dems want Acosta out over Epstein case. GOP seeking investigation. Then there's Matt Gaetz

By ALEX DAUGHERTY
McClatchy Washington Bureau

Matt Gaetz

Labor Secretary Alex Acosta

WASHINGTON — Democrats are calling for Labor Secretary Alex Acosta's resignation. Republicans support an internal investigation into Acosta's role in a controversial plea deal for multimillionaire sex abuser Jeffrey Epstein in 2008.

But Florida Rep. Matt Gaetz, one of President Donald Trump's biggest defenders in Congress, is taking a different approach.

In an interview with the Miami Herald this week, Gaetz said re-examining Acosta's handling of Epstein's case, which came under increased scrutiny after the Herald's three-part series Perversion of Justice, sets a "dangerous" precedent for prosecutors. A federal judge ruled last week that prosecutors run by Acosta, then the U.S. attorney for South Florida, broke the law when they failed to inform Epstein's underage victims of the plea agreement. The judge gave federal prosecutors 15 days to confer with Epstein's victims and their attorneys to come up with a resolution.

"I don't know what I don't know and certainly if there is ever an indication of misconduct, that has to be thoroughly reviewed, but I think it's a dangerous thing to go back and second-guess decisions that prosecutors have to make in real time," Gaetz said. "I'm deeply troubled by Mr. Epstein's actions, I think that he certainly should have faced a far stiffer consequence than he did, but having tried cases I know that it's hard to go back and sort of second-guess the risk analysis that goes into putting witnesses before a jury and subjecting them to cross-examination."

In fact, the judge in the case, U.S. District Judge Kenneth A. Marra, was careful to say he was not questioning the prosecution's authority to sign a non-prosecution agreement. However, the judge said the U.S. attorney had an obligation to consult with Epstein's victims under the Crime Victims' Rights Act. Acosta's deliberate decision not to do so — at the insistence of Epstein's legal team — violated that law, rendering the outcome illegal, Marra wrote in a 33-page order.

Gaetz's stance is not shared by other South Florida lawmakers, including Republicans.

Republican Sen. Marco Rubio, who introduced Acosta at his confirmation hearing, said he wants to see the results of an investigation into the Justice Department's internal decision-making process about Epstein's plea deal before deciding on Acosta's future.

"We'd love to have an investigation that looks at all that internal deliberation and who knew what about this, how they talk about it, how was this decision ultimately made and what paper trail is there about that decision-making," Rubio said. "Obviously, newspaper reporting is important but so is whatever facts the Justice Department has in its possession."

Sen. Rick Scott, Rubio's fellow Republican, had a similar view, along with Miami Republican Rep. Mario Diaz-Balart. Both said Acosta doesn't need to resign at this time, but want the investigation to continue.

"We don't really know all the facts yet so it ought to come out," Scott said. "We need more information."

Six of the seven Democrats in Congress from Miami-Dade and Broward have called on Acosta to resign, the exception being Rep. Donna Shalala.

Shalala was part of a group of Democrats who signed on to a letter last week demanding the passage of a bill that would allow the Department of Justice's Inspector General to review the conduct of attorneys within Justice, a power it does not currently have. Acosta was responsible for negotiating Epstein's agreement when he pleaded guilty to two prostitution charges in state court instead of facing federal charges, even though he was accused of sexually abusing dozens of young girls in his Palm Beach mansion.

Four Democrats, Rep. Debbie Wasserman Schultz, Rep. Debbie Mucarsel-Powell, Rep. Lois Frankel and Rep. Ted Deutch, signed on to a letter calling for Trump to demand Acosta's resignation. Rep. Alcee Hastings also said Acosta should go.

"I would think under the circumstances with such a hot lamp on it, he'd be better served to resign," Hastings said. Hastings, a federal judge who was impeached and removed from office on corruption allegations before successfully running for the House, said he had never seen a plea agreement like Epstein's during his legal career.

Rep. Frederica Wilson went one step further, saying Acosta should be removed from office if he does not resign.

"The … manner in which he handled the Epstein case clearly demonstrates that he is not the right person to serve as our nation's labor secretary," the Democrat said in a statement. "If he could not stand up against Epstein's white-shoe attorneys, he clearly is not qualified to take on the networks of human traffickers operating in the United States and represent their victims."

Gaetz, the outlier among those interviewed, is important because he is a key Trump ally who frequently speaks with the president. In his second term in Congress after serving in the state House, Gaetz represents the views of the president's most fervent supporters and attracts national attention for his defense of the president's policies and rhetoric.

Gaetz is currently the subject of an inquiry by the Florida Bar after posting a tweet that critics said appeared to be threatening toward former Trump lawyer Michael Cohen. The tweet, which was later deleted, implied that Cohen had extramarital relations and was posted the night before the public hearing where Republicans attempted to shred Cohen's credibility as he detailed his illegal activities on behalf of the president.

Gaetz suggested that Acosta's decision to cut a plea deal without the victims knowing could have been a move to protect them.

"I don't know if this was the case in this matter, but as the former criminal justice chairman in Florida, I've seen how a lot of these sexual violence cases, the fragility of witnesses and the willingness of witnesses can be a factor," Gaetz said. "I'm not saying it was here, I'm just saying that in these types of cases it's something that's always on the minds of prosecutors."

Eyeing 2020, White House steps up 'socialism' attack on Democrats

WASHINGTON (AP) — As the White House gears up for the 2020 campaign, it's pressing the case that Democrats are rallying behind what it's calling the policies of "socialism."

Trying to portray Democrats as out of step with ordinary Americans, Vice President Mike Pence said in a speech Friday at the Conservative Political Action Conference that the choice in the next election is "between freedom and socialism, between personal responsibility and government dependence."

"The moment America becomes a socialist country is the moment America ceases to be America," Pence told the crowd of conservative activists.

Pence also took aim at "Medicare-for-all" and the Green New Deal, policy proposals prominent in the crowded Democratic contest for the presidential nomination.

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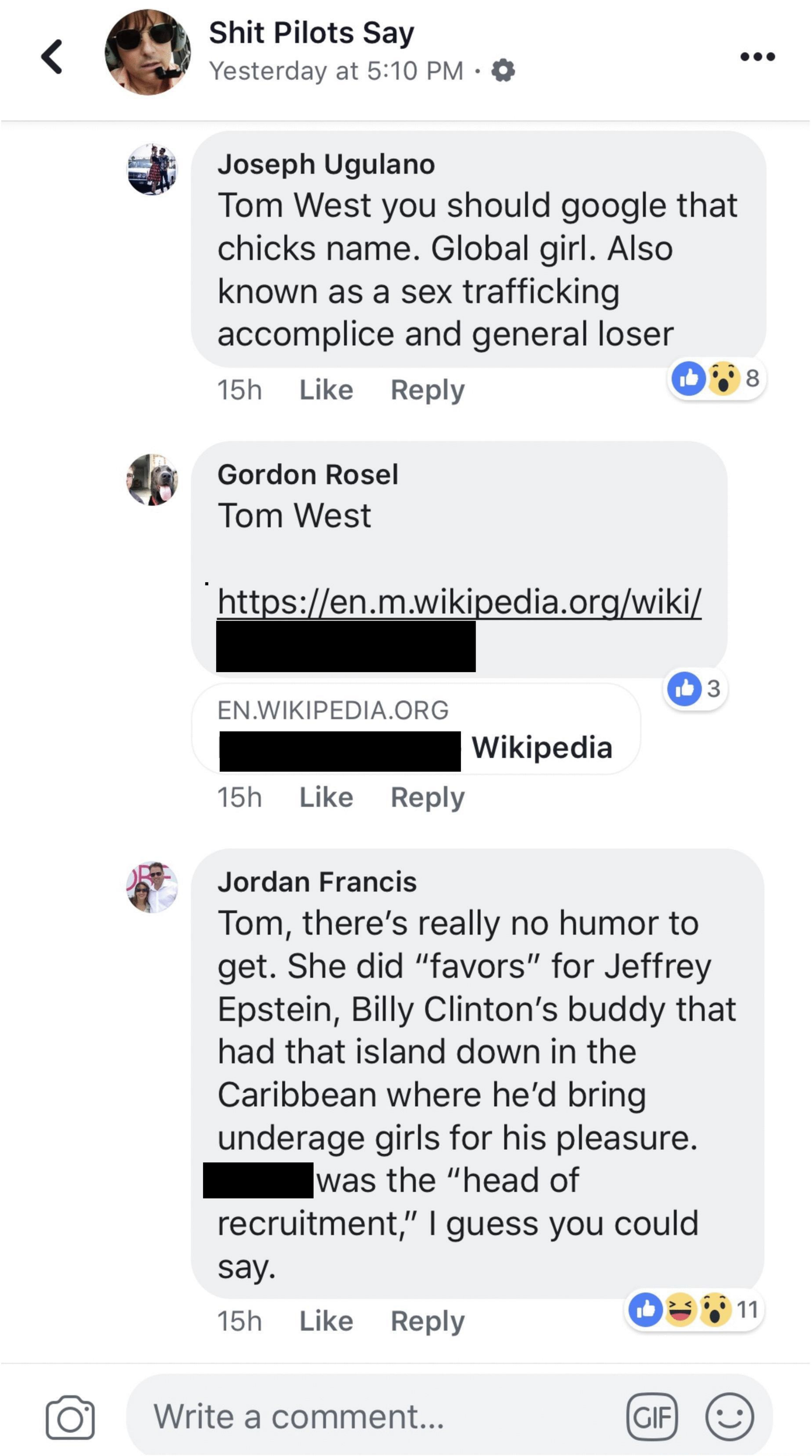

Shit Pilots Say
Yesterday at 5:10 PM ·

Joseph Ugulano
Tom West you should google that chicks name. Global girl. Also known as a sex trafficking accomplice and general loser

👍😮 8

15h Like Reply

Gordon Rosel
Tom West

https://en.m.wikipedia.org/wiki/ [redacted]

👍 3

EN.WIKIPEDIA.ORG
[redacted] **Wikipedia**

15h Like Reply

Jordan Francis
Tom, there's really no humor to get. She did "favors" for Jeffrey Epstein, Billy Clinton's buddy that had that island down in the Caribbean where he'd bring underage girls for his pleasure. [redacted] was the "head of recruitment," I guess you could say.

👍😆😮 11

15h Like Reply

Write a comment...

From: [redacted]
Sent: Thursday, January 31, 2013 11:32 AM
To: Jeffrey Epstein
Subject: Re:

Importance: High

Apparently Brazil is a hot investment place now (?) It is more about the offset part than the jet deal. France, Sweden and USA are all lobbying to get the jet deal as aviation is tied into potentially big tourism deals. (36 planes)
I was just on a call with a guy in Sweden who is dealing with this...
I never know if the stories are real, but he claims to work with the Brazilian president, Obama, Warren Buffet etc..

From: Jeffrey Epstein <jeevacation@gmail.com>
To: [redacted]
Sent: Thursday, January 31, 2013 5:47 AM
Subject: Re:

brazil , has tried to buy fighters, in the past, they don't have a lot of money,

On Thu, Jan 31, 2013 at 6:36 AM, [redacted] wrote:

> Hmm, so the offset service provider does what - negotiation between the parties? Complex sounds interesting...
>
> ---
>
> **From:** Jeffrey Epstein <jeevacation@gmail.com>
> **To:** [redacted]
> **Sent:** Thursday, January 31, 2013 3:36 AM
> **Subject:** Re:
>
> Yes , one of the most complex negotiations they re very strange. Someone buys fighters but with the fighter money , some must be used for specific third party items. I will buy your pussy for 10k, but with 2 of the 10 you have to buy me food. And to make matter worse I need to borrow thev10 from you.
>
> On Thursday, January 31, 2013, [redacted]:
>
>> Do you understand offset agreements? I got asked to be involved in negotiating some of the deals between Brazil and other countries in regards to the purchase of new fighter jets..
>>
>> What is an offset service provider?
>
> --
> **
> The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of Jeffrey Epstein

> Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return e-mail or by e-mail to jeevacation@gmail.com, and destroy this communication and all copies thereof, including all attachments. copyright -all rights reserved

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From: Al seckel [redacted]
Sent: 12/15/2010 5:36:27 PM
To: Jeffrey Epstein [jeevacation@gmail.com]
Subject: Results

Importance: High

Jeffrey,

The bots did the sweep. Here are the new results taken as of a minute ago. You have only one negative article left on front page of google, which is the Huffington Post article. The Huffington Post is extremely hard to move, because it is so powerful, has millions of links to it, and uploads massive new and original content it on a daily basis with posting from out side readers. We managed to push it down the page, as it used to be at the top. If we were able to post original content to both the science and the org site (absolutely not a single word to this day by Jessica, just talk), we would have been able to push it down even further, and off the page. WE did manage to get rid of the daily beast article, which is now far removed, inspite of their own efforts to keep it prominent.

Toxic suggested search engine terms that popped up automatically when you typed in your name are also now removed.

Wikipedia was an important victory, as it will always be at the top of the search engine results. ow the head lines do not mention convicted sex offender or pedophile. Instead, Philanthrophic work, Epstein Foundation, Promotion of Scientists. We have stopped the hacking on your wiki site, and that was a major effor. Your wiki entry now is pretty tame, and bad stuff has been muted, bowlerized, and pused to the bottom. Careful editing and wording has muted the effect immensely. We hacked the site to replace the mug shot and caption, and now has an entirely different photo and caption. This was a big success.

We pushed the Edge all the way up to the front page, where it was previously buried on page 5 of google search.

We have promoted the other jeffrey epsteins, and other pages are also filled with your material.

And, while the sites are up, and in the direction we hoped, they are still new, and subject to volitility, especially if new original content is not added on a minimum of a weekly basis. I have been forbideen to add new content to the philanthrophic site as well as the science site, and therefore, as a result our rating slipped down (still on the first page, but would have liked them (and some of the articles to been able to push Huffington off page). We also helped with you images, and the first images that come of you on a google search are not of your mug shot, etc.

Your daily beast foe is still at it, and trying to promote her sites against you in the same way that we try to depromote you.

As far as this site is concerned, and the continuation of this, I do not know what you wish to do. Clearly, you have no interest in my continuing. And, I am not sure if you want to continue the project at all. If the latter, and you stop, eventually it will just go into the way of entropy, and it will return to the old form. The major work has been done, but it needs to be maintained. For it to get better results, it needs to have constant input and supervision, and that means generating proper content, not just editing and grammatical fixes. Writers need to know what to write. THe philanthrophy site is at the bottom of the page precisely because you have not allowed us to add any content to it, and as a result it suffers.

You paid Mike $2500, which he applied for the purchasing of his replacement servers, but his fee of $7500 balance is now due if you want to continue. Please let me know what you want to do. I need to inform him, and if you are not going to use him, he needs to take on his other clients and devote his time there.

This needs to be contrasted with what we started with, which was a search on your name, which had nine/10 very toxic prominent stories, and toxic Wiki article and headline.

Search Results

1. **Jeffrey Epstein** - Wikipedia, the free encyclopedia
 - 9 visits - Dec 2
Jeffrey Edward **Epstein** (born January 20, 1953 in Coney Island, New York) is a Jewish-American financier and philanthropist. **Epstein** was raised in Coney **...**
Philanthrophic Work - The Epstein Foundation - Promotion of Scientists
en.wikipedia.org/wiki/**Jeffrey_Epstein** - Cached - Similar

2. Images for **jeffrey epstein**
 - Report images

3. **Jeffrey Epstein** | Profiles in Science
 - 4 visits - Nov 3
Jeffrey Epstein presents some of the greatest minds and finest scientists working today.
www.**jeffreyepstein**science.com/ - Cached

4. **Jeffrey Epstein**: International Moneyman of Mystery
He's pals with a passel of Nobel Prize–winning scientists, CEOs like Leslie Wexner of the Limited, socialite Ghislaine Maxwell, even Donald Trump.
nymag.com/nymetro/news/people/n_7912/ - Cached - Similar

5. Edge: **JEFFREY EPSTEIN**

JEFFREY E. **EPSTEIN** is a money manager and science philanthropist who currently serves as the Chairman and Chief Executive Officer of the Financial Trust **...**
www.edge.org/3rd_culture/bios/**epstein**.html - Cached - Similar

6. The Plastic Surgeon: **Jeffrey Epstein** | Full of Crop
Dec 9, 2010 **...** Dr. **Jeffrey Epstein** is an internationally known reconstructive surgeon, known for exhibiting the highest standards in the medical field.
fullofcrop.com/2010/12/09/the-plastic-surgeon-**jeffrey**-**epstein**/ - Cached

7. **Jeffrey Epstein**, MD, FACS, Miami, New York Hair Transplant Surgeon
Dr. **Epstein** and the hair transplant surgeons at the Foundation for Hair Restoration are experts in the field of hair restoration. Dr. **Epstein** is one of the **...**
www.foundhair.com/pages/about.shtml - Cached - Similar

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Sent: 12/16/2010 1:15:29 PM
To: Jeffrey Epstein [jeevacation@gmail.com]
Subject: Re: Results

Importance: High

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I spend literally four months of non-stop work, creativity, and my own political capital to getyou this so far, which saved you not only time, but countless dollars, and isn't something that can be readily bought. I had people working also for free. I gained access to information that standard seo companies don't have. In addition, I wasted a lot of time talking to people who promise to help, but end up providing nothing, and so, I end up having to do it myself. What do I get in return, constant back slapping to my head...

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From: Al seckel [aseckel@yahoo.com]
Sent: 12/16/2010 1:20:06 PM
To: Jeffrey Epstein [jeevacation@gmail.com]
Subject: Re: Results

Importance: High

you can call as i am obviously up.[redacted]

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From: Al seckel [[redacted]]
Sent: 12/16/2010 1:27:48 PM
To: Jeffrey Epstein [jeevacation@gmail.com]
Subject: Re: Results

Importance: High

ok. Just FYI, your detractors are on a rampage against you this past week.... Mike is trying to take care of it (NO! there is no extra charge) it comes with the territory.

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Sent: Thu, December 16, 2010 5:20:13 AM
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> On Wed, Dec 15, 2010 at 12:36 PM, Al seckel <[redacted]> wrote:

Jeffrey,

The bots did the sweep. Here are the new results taken as of a minute ago. You have only one negative article left on front page of google, which is the Huffington Post article. The Huffington Post is extremely hard to move, because it is so powerful, has millions of links to it, and uploads massive new and original content it on a daily basis with posting from out side readers. We managed to push it down the page, as it used to be at the top. If we were able to post original content to both the science and the org site (absolutely not a single word to this day by Jessica, just talk), we would have been able to push it down even further, and off the page. WE did manage to get rid of the daily beast article, which is now far removed, inspite of their own efforts to keep it prominent.

Toxic suggested search engine terms that popped up automatically when you typed in your name are also now removed.

Wikipedia was an important victory, as it will always be at the top of the search engine results. ow the head lines do not mention convicted sex offender or pedophile. Instead, Philanthrophic work, Epstein Foundation, Promotion of Scientists. We have stopped the hacking on your wiki site, and that was a major effor. Your wiki entry now is pretty tame, and bad stuff has been muted, bowlerized, and pused to the bottom. Careful editing and wording has muted the effect immensely. We hacked the site to replace the mug shot and caption, and now has an entirely different photo and caption. This was a big success.

We pushed the Edge all the way up to the front page, where it was previously buried on page 5 of google search.

We have promoted the other jeffrey epsteins, and other pages are also filled with your material.

And, while the sites are up, and in the direction we hoped, they are still new, and subject to volitility, especially if new original content is not added on a minimum of a weekly basis. I have been forbideen to add new content to the philanthrophic site as well as the science site, and therefore, as a result our rating slipped down (still on the first page, but would have liked them (and some of the articles to been able to push Huffington off page). We also helped with you images, and the first images that come of you on a google search are not of your mug shot, etc.

Your daily beast foe is still at it, and trying to promote her sites against you in the same way that we try to depromote you.

As far as this site is concerned, and the continuation of this, I do not know what you wish to do. Clearly, you have no interest in my continuing. And, I am not sure if you want to continue the project at all. If the latter, and you stop, eventually it will just go into the way of entropy, and it will return to the old form. The major work has been done, but it needs to be maintained. For it to get better results, it needs to have constant input and supervision, and that means generating proper content, not just editing and grammatical fixes. Writers need to know what to write. THe philanthrophy site is at the bottom of the page precisely because you have not allowed us to add any content to it, and as a result it suffers.

You paid Mike $2500, which he applied for the purchasing of his replacement servers, but his fee of $7500 balance is now due if you want to continue. Please let me know what you want to do. I need to inform him, and if you are not going to use him, he needs to take on his other clients and devote his time there.

This needs to be contrasted with what we started with, which was a search on your name, which had nine/10 very toxic prominent stories, and toxic Wiki article and headline.

Search Results

1. **Jeffrey Epstein** - Wikipedia, the free encyclopedia
 - 9 visits - Dec 2
Jeffrey Edward **Epstein** (born January 20, 1953 in Coney Island, New York) is a Jewish-American financier and philanthropist. **Epstein** was raised in Coney **...**
Philanthrophic Work - The Epstein Foundation - Promotion of Scientists
en.wikipedia.org/wiki/**Jeffrey_Epstein** - Cached - Similar
2. Images for **jeffrey epstein**
 - Report images
3. **Jeffrey Epstein** | Profiles in Science
 - 4 visits - Nov 3
Jeffrey Epstein presents some of the greatest minds and finest scientists working today.
www.**jeffreyepstein**science.com/ - Cached
4. **Jeffrey Epstein**: International Moneyman of Mystery
He's pals with a passel of Nobel Prize–winning scientists, CEOs like Leslie Wexner of the Limited, socialite Ghislaine Maxwell, even Donald Trump.
nymag.com/nymetro/news/people/n_7912/ - Cached - Similar
5. Edge: **JEFFREY EPSTEIN**
JEFFREY E. **EPSTEIN** is a money manager and science philanthropist who currently serves as the Chairman and Chief Executive Officer of the Financial Trust **...**
www.edge.org/3rd_culture/bios/**epstein**.html - Cached - Similar
6. The Plastic Surgeon: **Jeffrey Epstein** | Full of Crop
Dec 9, 2010 **...** Dr. **Jeffrey Epstein** is an internationally known reconstructive surgeon, known for exhibiting the highest standards in the medical field.
fullofcrop.com/2010/12/09/the-plastic-surgeon-**jeffrey**-**epstein**/ - Cached
7. **Jeffrey Epstein**, MD, FACS, Miami, New York Hair Transplant Surgeon
Dr. **Epstein** and the hair transplant surgeons at the Foundation for Hair Restoration are experts in the field of hair restoration. Dr. **Epstein** is one of the **...**
www.foundhair.com/pages/about.shtml - Cached - Similar
8. **Jeffrey Epstein**, Convicted Pedophile And Former Hedge Fund Titan **...**
Jul 21, 2010 **... Jeffrey Epstein**, the former hedge fund manager who pleaded guilty to soliciting an underage girl for prostitution, is now free of the **...**
www.huffingtonpost.com/.../**jeffrey-epstein**-disgraced_n_654674.html - Cached
9. Dr. **Jeffrey Epstein**, MD, FACS | Board Certified Plastic Surgeon **...**
Dr. **Jeffrey Epstein** has been in solo private practice in Miami since 1994, and New York City since 2005, and is a Clinical Professor at the University of **...**
www.justformenplasticsurgery.com/AboutDr**Epstein**.asp - Cached - Similar
10. **Jeffrey Epstein** on Sports
An old school look at today's sport's world focusing on professional basketball and football by**Jeffrey Epstein**.
www.**jeffreyepstein**sports.com/ - Cached

11. **Jeffrey Epstein** | Philanthropy
Jeffrey Epstein has three main philanthropic and charitable organizations he uses to fund arts, sciences, research and other causes.
www.**jeffreyepstein**.org/ - Cached

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From: [redacted]
Sent: Tuesday, March 8, 2011 8:32 PM
To: Jeffrey Epstein
Subject: Re:

Importance: High

? Good for you. And ghislaine. congrats

From: Jeffrey Epstein <jeevacation@gmail.com>
To: [redacted]
Sent: Tue, March 8, 2011 3:27:58 PM
Subject:

Jeffrey and Ghislaine: Notes on New York's Oddest Alliance <http://www.vanityfair.com/online/daily/2011/03/notes-on-new-yorks-oddest-couple-jeffrey-epstein-and-ghislaine-maxwell.html>

by ***Vicky Ward*** <*http://www.vanityfair.com/contributors/vicky-ward*>
March 8, 2011, 2:30 PM

"I've got a story idea for you. The rebuilding of Indonesia. Or New Orleans. Or both. Go there. I've just been. You will never think the same way about anything again."
So spoke not Bill or Melinda Gates, but Ghislaine Maxwell, the 48-year-old woman being written up everywhere at the moment as the alleged "procurer" of young women for billionaire Jeffrey Epstein.
Epstein, 57, is the financier who spent a year in jail on charges of soliciting prostitutes—and now there is talk of another investigation because various women, now in their twenties and thirties, have come forward with allegations that he molested them when they were under-age. The allegations first surfaced in British newspapers, which have zeroed in on Epstein's friendship with Prince Andrew, who has recently tried to publicly disassociate himself from his old pal.
I wrote a piece for *Vanity Fair* in 2003 called "The Talented Mr. Epstein." It was largely a business piece that focused on his mysterious exit from Bear Stearns in 1981, his close relationships with Jimmy Cayne, Les Wexner, the chairman of Limited Brands, and above all, the man who claimed to be his mentor, Steven Jude Hoffenberg, who is currently serving a 20-year-jail sentence for bilking investors in Towers Financial out of $450 million.

The piece alluded to Epstein's great friendship with Maxwell, and how she introduced him to young women with whom he had sexual relationships. But, in the end, the story didn't really go there, focusing instead on the issue that remains a mystery—how Jeffrey made his money, and how Ghislaine made hers.

This is not to say I didn't hear stories about the girls. I did. But, not knowing quite who to believe, I concentrated on the intriguing financial mystery instead. But now the women have come back. Not the same ones, different ones. And their stories are bone-chilling. Journalists from England have phoned—and, in one case, flown—to ask me about Epstein and Maxwell. Who is he? And the British, especially, want to know: Who is she? At this point, I am so bored of repeating myself to others—it was, after all, my 2003 *Vanity Fair*story that really brought him into the limelight—that I have decided to write about this myself.

Bizarrely, perhaps, I have gotten to know Jeffrey and Ghislaine far better *after* my piece than before it. I kept running into both of them, separately, at parties. Jeffrey is not a social animal so he usually has a couple of young women with him who stand two feet behind him, as if serving a monarch. "Do they speak?" I remember asking him once, nodding at his lookalike blondes. He laughed. “Not like *you,*Vicky,” was his riposte.

I remembered that when we’d once discussed math—in particular, an isosceles triangle—and I revealed I hadn’t studied math since I was 14 (such is, or was, the way of the British educational system), I received a package at home via messenger. It was a book: “Math for idiots.”

So he is not without humor, even though he doesn’t drink or smoke, and hates restaurants.

“Jeffrey knows a good deal about most subjects,” newspaper publisher Mort Zuckerman told me last week. He was certainly preaching to the converted. The truth is, Epstein *does* know a lot about a lot of things. Just a few moments in his company and you know this to be true.

When I saw pictures of Prince Andrew walking in Central Park with Jeffrey, my immediate thought was that “Andy”—as Jeffrey calls him—is probably asking for help with his role as British trade envoy, or whatever his strange title is. Because if one thing’s for sure: When it comes to international business, Jeffrey knows what he’s talking about far more than “Andy” does. Which is why Leon Black, Mort Zuckerman and a few other financiers hang out with him.

And Ghislaine?

Full disclosure: I like her. Most people in New York do. It’s almost impossible not to.

She is always the most interesting, the most vivacious, the most unusual person in any room. I’ve spent hours talking to her about the third world at a bar until 2am. She is as passionate as she is knowledgeable. She is curious. She has spent weeks at the bottom of the ocean, literally going deeper than anyone else. She has sent me a DVD of the fish there. Her rolodex would blow away almost anyone else’s I can think of—probably even Rupert Murdochs’. She is very well-read and can talk about most things for hours. She is passionate about Bill Clinton with whom she is close friends.

Yet, touchingly, when she had to give a speech at the 40th birthday party of her best friend, Ariadne Calvo-Platero, (known fondly to her close friends as “the Tennis Goddess”) Ghislaine shook a little with nerves. When it comes down to things she really cares about—and Ariadne is one of them—Ghislaine shows her vulnerability. And that vulnerability is key to understanding her friendship with Jeffrey.

“He saved her,” I remember a close friend of mine telling me. “When her father died, she was a wreck; inconsolable. And then Jeffrey took her in. She’s never forgotten that—and never will.”

In many ways, the socially awkward Epstein with his big house, plane, island and ranch was the perfect replacement for her father, the late Robert Maxwell, newspaper tycoon and criminal. Sure, Jeffrey had his sexual pecadillos, but then Ghislaine’s father was not without his oddities. After all, it was he who died leaving a massive “black hole” he’d fraudulently created. To Ghislaine, Jeffrey’s habits may not have seemed that strange.

In fact, she probably figured, rather like I have, after years of writing about he very rich, that most successful people in the end either have some weird habit (the late Bruce Wasserstein had the weight issues, the girl issues, and moved countries to avoid paying tax), or they break the law (Sam Waksal, Martha Stewart.) You don’t tend to get to the top by being the world’s most balanced human being. Even the folksy Warren Buffett didn’t quite manage a normal life—whatever that is. He had a second “wife” for many years whose existence he has been open about.

So what to make of the current fuss over Ghislaine? I haven’t spoken to her or to Jeffrey, but I suspect that her loyalty to friends like Bill Clinton will keep her in good stead, in the end, she’ll be out and about as always. Look at Waksal and Stewart. No one sees them and thinks: criminal. Au contraire. In this city, money makes up for all sorts of blemishes.

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1. Jeffrey Epstein and Alan Dershowitz have been friends for years. The two met in July, 1996, when Mr. Epstein was introduced to Mr. Dershowitz by a mutual friend and flew on his private jet to Martha's Vineyard to spend the day with Mr. Dershowitz.

2. Mr. Epstein, had grown up in Coney Island. He did not graduate from college.

3. Mr. Epstein was wealthy and owned luxurious houses and private planes and was sometimes accompanied by beautiful women. He had many intellectuals as friends.

4. Mr. Epstein and Mr. Dershowitz quickly found common interests. Mr. Dershowitz has said they talked about science, academia, and Harvard.

5. In August, 1996, Mr. Epstein invited Mr. Dershowitz to meet Leslie Wexner, whom Mr. Epstein described as his mentor. Mr. Epstein and Mr. Dershowitz took Mr. Epstein's private jet to New Albany, Ohio, where Mr. Wexner had an estate, to attend a party for Mr. Wexner's fifty-ninth birthday. Mr. Dershowitz later said that he was Mr. Epstein's intellectual gift to Mr. Wexner.

6. In the seventies, Mr. Epstein had been a trader and a wealth manager at Bear, Stearns, before leaving in 1981 to start a small firm, J. Epstein & Co.

7. In 1987, Mr. Wexner hired Mr. Epstein as his financial adviser. Mr. Epstein has said that he re- fused to accept clients with less than a billion dollars in assets. The only client that he has ever named publicly is Mr. Wexner. When asked in a deposition whether Mr. Wexner was his only client, Mr. Epstein took the Fifth.

8. In 1989, Mr. Wexner bought a seven-story Manhattan mansion, overlooking the Frick Museum. The mansion was among the largest private residences in the city. Mr. Wexner is reported to have sold it to Mr. Epstein for one dollar. In 1996, Mr. Epstein told the Times that he owned the mansion.

9. In 1997, Mr. Epstein invested thirty million dollars in Boston Provident. Orin Kramer, the founder of the hedge fund, understood that the money came from Mr. Wexner. Later in 1997, Mr. Epstein called Mr. Kramer and asked him to stop by his office. Mr. Dershowitz also attended the meeting. At the meeting, Mr. Epstein asked Mr. Kramer to accept an investment of about half a million dollars from Mr. Dershowitz. Mr. Kramer accepted as a favor to Mr. Epstein. Mr. Dershowitz signed standard papers acknowledging that his money was at significant risk.

10. In 1998, the fund sustained enormous losses. Mr. Epstein told Mr. Kramer that one of the two of them would have to reimburse Mr. Dershowitz. Mr. Epstein said that if he were to have to reimburse Mr. Dershowitz, Mr. Kramer would regret it. Mr. Kramer agreed to restore Mr. Dershowitz's losses, if Mr. Epstein would leave the remainder of the money he controlled in the fund.

11. Mr. Epstein threw parties at his house in New York. He would often invite scientists, whose company he enjoyed.

12. Mr. Epstein also had an interest in Harvard. In 1990, he and Mr. Wexner had helped to fund the construction of a new building at Harvard Hillel, named after Henry Rosovsky, then the Dean of the Faculty of Arts and Sciences.

13. Mr. Dershowitz began introducing Mr. Epstein around the college. Mr. Epstein subsequently began funding research into psychology and the history of science, and he became a member of the advisory board of the Harvard Society of Mind, Brain, and Behavior, and a Harvard fellow. Mr. Epstein also established an office in Brattle Square, where he held seminars on contemporary academic ideas, in which Mr. Dershowitz sometimes participated.

14. In an article in the Harvard Crimson, Mr. Dershowitz said that he would debate mathematics, genetics, law, and psychology with Mr. Epstein and professor Steven Kosslyn, and that in these discussions, they would all cut each other off all the time "because we just get it."

15. Mr. Epstein would evaluate drafts of Mr. Dershowitz's books. Mr. Dershowitz has said that Mr. Epstein was the only person outside his family whom he trusted to do this.

16. After Lawrence Summers became president of Harvard in 2001, he flew to Palm Beach on Mr. Epstein's plane and stayed at his mansion. In 2003, Mr. Epstein pledged thirty million dollars to Harvard to create the Epstein Program for Mathematical Biology and Evolutionary Dynamics. To lead it, he recruited Martin Nowak, a biologist from Princeton University. Mr. Dershowitz became a Faculty Affiliate of the program.

17. In January 2007, the evolutionary biologist Robert Trivers was scheduled to receive the Crafoord Prize in biosciences. Mr. Nowak invited him to give a talk at the Epstein Center, followed by dinner. That April, Mr. Trivers sent Mr. Dershowitz a letter that criticized him for what Mr. Trivers viewed as an attack on Norman Finkelstein, and also said that Mr. Dershowitz was a Nazi or Nazi-apologist for his stance on the Israeli-Palestinian conflict.

18. On May 25, the day of his talk, Mr. Nowak, having arrived at Harvard, told Mr. Trivers that he was cancelling the talk a planned celebration, under orders from someone he would not identify. The reason given was that Mr. Trivers had called a Harvard professor a Nazi. Mr. Trivers said that he later learned that the order came from Mr. Epstein, under pressure from Mr. Dershowitz. (Mr. Dershowitz has denied this.) Mr. Trivers said that Mr. Epstein later apologized for having stopped the talk, using the word "apology," and Mr. Trivers now described them as friendly.

19. In the summer of 2000, according to a deposition by Juan Alessi, who managed Mr. Epstein's house in Palm Beach, Alessi was driving Ghislaine Maxwell, Mr. Epstein's

girlfriend, to Donald Trump's Mar-a-Lago resort, when they saw a girl walking from the main lobby toward the spa. Ms. Maxwell approached the girl, a sixteen year old named [redacted], who was reading a book on anatomy and massage therapy. Ms. Maxwell informed her that she knew somebody who was looking for a travelling masseuse. This person was Mr. Epstein.

20. When [redacted] was dropped off at the house, there was a big hall table with pictures of young nude girls, mixed in with those of celebrities and politicians.

21. Ms. Maxwell led [redacted] upstairs to a suite where Mr. Epstein was lying, nude, and showed [redacted] how to massage him. Ms. Maxwell then took off her clothing, and instructed Ms. Giuffre to remove her clothing. Ms. Maxwell told Ms. Giuffre that it was cute that she was wearing children's underwear. Ms. Maxwell then told Ms. Giuffre to straddle Mr. Epstein, and Ms. Giuffre and Mr. Epstein had sex. Afterward, Mr. Epstein told Ms. Giuffre that she "did a really good job," and gave her two hundred dollars.

22. [redacted] returned the next day, at Ms. Maxwell's invitation, and she became a regular presence at the home. She was informed that she was to have sex with Mr. Epstein several times a day, often along with Ms. Maxwell and other girls. She was subsequently told that Mr. Epstein would also be lending her to other men. Ms. Maxwell told her that she was expected to please these men in whatever way they wanted.

23. Mr. Epstein told [redacted] to report back to him about what the men liked. In his New York mansion, Mr. Epstein had also installed a video system that taped every room in the house, which could allow Mr. Epstein to accumulate information to use as leverage against the men.

24. Mr. Epstein used the girls under his control to bring in more girls. He preferred young girls from difficult backgrounds who would be in need of money. The women around Mr. Epstein were discouraged from speaking with one another.

25. Mr. Epstein owned nearly a dozen apartments in New York in a building on the Upper East Side, where he kept what were called "semi-permanent" girls.

26. In [redacted] case, Mr. Epstein paid her, paid for her apartment, and took her to New York, London, Paris, Tangiers, and his private island. He told [redacted]that he was powerful, that he owned the police department, and that he had friends who owed him favors. Mr. Epstein was a donor to the Palm Beach Police Department for years.

27. In 2002, soon after [redacted] turned nineteen, Mr. Epstein and Ms. Maxwell sent her to Thailand for a three-week course in massage, and arranged for her to bring back a young girl for Mr. Epstein.

28. In March 2005, a fourteen-year-old girl in Palm Beach described to the police that Mr. Epstein had paid her three-hundred dollars for a massage, told her to take off her clothes, and masturbated.

29. The police soon began investigating Mr. Epstein for sexually abusing underage girls. The case against Mr. Epstein would involve the testimony of dozens of young girls. Press coverage included a list of famous men who travelled on Mr. Epstein's plane, the so-called Lolita Express, to Little St. James, an island that Mr. Epstein owned in the Caribbean.

30. When Mr. Epstein learned about the investigation, in the fall of 2005, he immediately called Mr. Dershowitz, who established himself in the lead of a team of prominent attorneys from New York, Boston, Washington, D.C., and Miami.

31. Mr. Epstein once likened his offense to that of "a person who steals a bagel."

[Much of the following seven queries involve actions that Mr. Dershowitz performed while representing Mr. Epstein. Can you confirm that they are accurate?]

32. Mr. Dershowitz prepared a dossier featuring entries from Web sites like MySpace, in which Mr. Epstein's alleged victims recounted experiences with alcohol or marijuana and wrote about sex.

33. Florida State Attorney Barry Krischer helped Mr. Dershowitz arrange a meeting with Joseph Recarey, the lead investigator in the case. Mr. Dershowitz presented the dossier as evidence that the girls were not of high moral quality.

34. Mr. Dershowitz also raised questions about the police. He made a public-records request to the police department for any paper bearing the name of Michael Reiter, the Palm Beach police chief name, and began had private investigators perform background investigations on Mr. Reiter.

35. For months, Mr. Reiter and Mr. Recarey were under constant surveillance, in which cars followed them, their trash was searched, and investigators contacted Mr. Reiter's ex-wife. Mr. Epstein has denied his involvement in this. In 2010, when Mr. Reiter testified about the surveillance, in 2010, Mr. Epstein turned to his lawyer and said, "That wasn't us!"

36. At one point, Mr. Recarey told Mr. Dershowitz that at least one of the investigators had tried to misrepresent himself to one of the alleged victims as a police officer. Mr. Dershowitz surmised that the woman was someone identified as [redacted] in depositions.

37. [redacted] had alleged that he Mr. Epstein had forcibly penetrated her when she was a minor. She told detectives that in 2003, when she was sixteen, a friend introduced her to Mr. Epstein. The friend told her that in exchange for a massage she could earn enough money for a camping trip in Maine that she wanted to go on. [redacted] said that she returned to Mr. Epstein's house hundreds of times, becoming his Mr. Epstein's favorite. She said that she sometimes had non-penetrative sex with Mr. Epstein and one of his "semi-permanent" girls, [redacted] whom Mr. Epstein was said to have bought from her parents in

Yugoslavia when she was about fifteen.[redacted] said that Mr. Epstein would take naked photographs of her and other girls and display the photographs in the house.

38. In a letter to Mr. Recarey, Mr. Dershowitz enclosed snippets gathered from [redacted] presence on social media. Mr. Dershowitz noted that [redacted] chose to go by the nickname "pimp juice," and he noted tha[redacted]appeared to have a fascination with marijuana. Mr. Dershowitz said that the two investigators who tried to speak with her were instructed beforehand to take notes, out of feat that she was an accomplished drama student, who, Mr. Dershowitz said, had misled others in the past and might try to do the same with the investigators. Mr. Dershowitz suggested that [redacted]. motivation was money, to be "really rich."

39. In July 2006, Krischer, charged Mr. Epstein with one count of aggravated assault. There was no mention of underage girls, nor a requirement to register as a sex offender, nor a threat of jail time.

40. In 2007, Mr. Epstein argued that he was being persecuted because he was Jewish. Lawyers for Mr. Epstein said that he was being unjustly targeted because of his wealth.

41. In the fall of 2007, Mr. Epstein's legal team negotiated a non-prosecution agreement, in which the federal government would throw out its indictment if Mr. Epstein pleaded to two state felony charges, solicitation of prostitution and procuring minors for prostitution. Mr. Epstein would also register as a sex offender and pay lawyers' fees for the victims who sued him. The agreement also contained a clause that protected four of Mr. Epstein's assistants, including [redacted]from prosecution. In the final days of the negotiations, an unusual provision was added that guaranteed immunity for "any potential co-conspirators."

42. Afterward, over nine months, Mr. Dershowitz and his team investigated prosecutors and their families, attempting to disqualify them, in order to prove the prosecution was tainted. The U.S. Attorney rejected these attempts. When officials at the Justice Department ruled that the charges offered by Mr. Dershowitz's team were baseless, Mr. Dershowitz's team went to more senior officials. Can you confirm that this description is accurate?

43. On June 30, 2008, with every alternative exhausted, Mr. Epstein pleaded guilty. He was given an eighteen-month sentence in a county jail, and allowed to depart every day, on work release, for an office that he had acquired nearby. At the office, Mr. Epstein received visitors, and a policeman served them coffee. Mr. Epstein told a friend that he was reading "De Profundis" in prison. Mr. Epstein was released after thirteen months.

44. In 2007, Ms. Maxwell called [redacted]who was living outside of Sydney. Ms. Maxwell told [redacted]that Mr. Epstein was being investigated, and that if[redacted] refused to cooperate, she'd be "taken care of." [redacted]told Ms. Maxwell that she wouldn't speak to anyone, but she declined compensation. A few days later, Mr. Epstein and his lawyer called to hear directly from her that she wouldn't be speaking to anyone.

45. In May 2009, [redacted] sued Mr. Epstein, as Jane Doe No. 3. In her complaint, [redacted] [redacted] stated that she had been sexually abused by Mr. Epstein and also was "required to be sexually exploited by Mr. Epstein's friends, including royalty, politicians, academicians, businessmen.

46. Mr. Epstein eventually settled her suit, and those of many other victims.

47. In December, 2014, [redacted] filed a motion to join a suit attempting to overturn the non-prosecution agreement. She claimed that Mr. Epstein had abused her, and had trafficked her to powerful friends as a way of gaining influence over them. In her motion, she named three men: Jean Luc Brunel; Prince Andrew, the Duke of York; and Mr. Dershowitz. She said that she had sex with Mr. Dershowitz at least six times, in Mr. Epstein's various residences, on his private island, in a car, and on his plane. [redacted] has also said that Mr. Epstein trafficked other girls.

48. A British-South African woman named [redacted] has also accused Mr. Epstein in a lawsuit of involving her in a sex-trafficking ring.

49. [redacted] said that in September, 2006, when she was twenty-two and recently arrived in New York, a new friend introduced her to Mr. Epstein, describing him as a philanthropist who used his wealth and connections to help poor young women in exchange for massages. [redacted] said that Mr. Epstein paid the friend five-thousand dollars in exchange for bringing [redacted] to him.

50. After the massages turned sexual, [redacted] was allowed to live in a large apartment in Mr. Epstein's building on the Upper East Side. She was also given a cell phone, car service, and money for living expenses. Mr. Epstein invited her to fly to his island, which she did several times in late 2006 and early 2007. Mr. Epstein and Ms. Maxwell told [redacted] [redacted] they could help arrange her admission at the Fashion Institute of Technology, where she dreamed of studying.

51. [redacted] was told that if she refused to have sex with Mr. Epstein and his associates, her apartment would be taken away, and Mr. Epstein would make sure that she couldn't go to college or get a job. Mr. Epstein told [redacted], who weighed about 125 pounds, that he wanted her to weigh 114. One night on Little St. James, Mr. Epstein took away [redacted] food and announced to other guests that if she didn't lose weight, she would have to move out.

52. In an affidavit, [redacted] said she spent significant time with Mr. Epstein in New York and that Mr. Epstein lent her out to friends and associates, including Mr. Dershowitz, at Mr. Epstein's townhouse. [redacted] described visiting Little St. James repeatedly, in order to have sex with Mr. Epstein, [redacted], and other girls and guests.

53. Last December, [redacted] suit was settled in her favor. Mr. Epstein paid her an undisclosed sum.

54. As part of the court proceedings, a lawyer for Ms. Maxwell mentioned that Mr. Dershowitz was one of several people [redacted] alleged Mr. Epstein had directed her to have sex with.

[The remainder of the queries involve allegations concerning Mr. Dershowitz but that also involve Mr. Epstein, that I would therefore like to verify with Mr. Epstein.]

55. [redacted] met Mr. Dershowitz in a brief encounter at Mr. Epstein's mansion in New York. After that, Mr. Dershowitz was seen with Mr. Epstein often. After some time, Mr. Epstein let Mr. Dershowitz use his bedroom, something that Mr. Epstein rarely, if ever, did for another man. Once, after [redacted] had sex with Mr. Epstein, Mr. Epstein walked out of his bedroom and Mr. Dershowitz entered and had sex with [redacted]. Can Mr. Epstein verify that this description is accurate?

56. Mr. Dershowitz visited Mr. Epstein's Palm Beach home four or five times a year, and typically stayed for two or three days. On one occasion, several girls, who were nude, were having lunch at the pool, and Mr. Dershowitz was also present. [redacted] said that she was made to give Mr. Dershowitz a massage and to tend to him. [redacted] also gave Mr. Dershowitz a massage on the beach at Little St. James and then went with him to one of the beach bungalows, which were just large enough to hold a bed, where she was made to have sex with him. Can Mr. Epstein verify that this description is accurate?

57. Mr. Dershowitz has said that he received a massage at Mr. Epstein's house in Palm Beach—though he has said that [redacted] wasn't the masseuse and he kept his underwear on. Can Mr. Epstein verify that this account is accurate?

58. Several months after meeting Mr. Epstein, [redacted] went to Miami for the weekend. When she returned, she told Mr. Epstein that she had met a man, who, with a friend, had attempted to rape her. Mr. Epstein told her that he would introduce her to one of his best lawyers, and he later introduced her to Mr. Dershowitz. Mr. Epstein and Mr. Dershowitz argued, successfully, against her going to the police, and Mr. Dershowitz told her that he would represent her. [redacted] did not know of the investigation into Mr. Epstein, or that Mr. Dershowitz was representing him.

59. Shortly afterward, [redacted] had dinner with Mr. Epstein and Mr. Dershowitz to talk about her case. When [redacted] asked how the case was proceeding, Mr. Dershowitz said little. Can Mr. Epstein verify that this description is accurate?

60. Several weeks after the dinner, was called to Mr. Epstein's mansion early one evening. Mr. Epstein, Mr. Dershowitz, and [redacted] were present. There [redacted] took Ms. Ransome upstairs. In the room [redacted] undressed [redacted] Mr. Dershowitz then walked in, undressed, and the three engaged in a sexual encounter, in

which Mr. Dershowitz didn't penetrate [redacted], but she was forced to perform oral sex on him and masturbate him. Can Mr. Epstein verify that this description is accurate?

61. Can you confirm that Mr. Dershowitz has been Mr. Epstein's lawyer, without interruption, since the police investigation began in 2005?

62. Mr. Dershowitz has said that Mr. Epstein and Ms. Maxwell had a joint defense agreement in this case, which would mean that Mr. Dershowitz's conversations with Ms. Maxwell are subject to attorney-client privilege. Does this description look accurate?

63. When Mr. Dershowitz was asked if he was still in touch with Mr. Epstein, he said that he doesn't represent Mr. Epstein, and then said that one never stops being someone's lawyer, and that he'd always take Mr. Epstein's call. Can Mr. Epstein confirm?

From: Jeffrey Epstein [jeevacation@gmail.com]
Sent: 9/28/2009 11:34:06 PM
To: Gmax [gmax1@ellmax.com]
Subject: Re:

we just rea;lzied that the picture , in my kitchen is me clinton and ted. how funny

On Mon, Sep 28, 2009 at 7:17 PM, Gmax <gmax1@ellmax.com> wrote:

> That's her..I couldn't remember her name
>
> ----- Original Message -----
> From: Jeffrey Epstein <jeevacation@gmail.com>
> To: Gmax
> Sent: Mon Sep 28 19:16:28 2009
> Subject: Re:
>
> do yu mean nicole junkerman
>
> On Mon, Sep 28, 2009 at 1:21 PM, gmax <gmax1@ellmax.com> wrote:
>
> Am in CA – that friend of yours whom I think lives in Paris was at the conference..she spoke to you last week..claims to be in charge of a hedge fund or something
>
> On 9/28/09 6:08 AM, "J J" <jeevacation@gmail.com> wrote:
>
> thanks,, where are you.. i loved your bono mick story,,
>
> On Mon, Sep 28, 2009 at 12:08 AM, Gmax <gmax1@ellmax.com> wrote:
>
> No later than Wednesday probably..
>
> ----- Original Message -----
> From: Jeffrey Epstein <jeevacation@gmail.com>
> To: Gmax
> Sent: Sun Sep 27 19:35:33 2009
> Subject:
>
> when does [redacted] have to get back? [redacted] went to new york
>
> --
> **
> The information contained in this communication is
> confidential, may be attorney-client privileged, may
> constitute inside information, and is intended only for
> the use of the addressee. It is the property of
> Jeffrey Epstein
> Unauthorized use, disclosure or copying of this
> communication or any part thereof is strictly prohibited
> and may be unlawful. If you have received this
> communication in error, please notify us immediately by
> return e-mail or by e-mail to jeevacation@gmail.com, and
> destroy this communication and all copies thereof,

including all attachments.

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and may be unlawful. If you have received this
communication in error, please notify us immediately by
return e-mail or by e-mail to jeevacation@gmail.com, and
destroy this communication and all copies thereof,
including all attachments.

From: Jeffrey Epstein <jeevacation@gmail.com>
Sent: Friday, March 4, 2011 4:38 PM
To: [redacted]
Subject: Fwd: FW: Ghislaine Maxwell

---------- Forwarded message ----------
From: **GMAX** <gmax1@ellmax.com>
Date: Fri, Mar 4, 2011 at 8:28 AM
Subject: FW: Ghislaine Maxwell
To: J Jep <jeevacation@gmail.com>

------ Forwarded Message
From: Mark Cohen <[redacted]>
Date: Fri, 4 Mar 2011 11:14:35 -0500
To: NY Max <gmax1@ellmax.com>
Subject: FW: Ghislaine Maxwell

FYI, following up on my email of this morning. Again, I have no intention of responding unless you direct otherwise.

From: [redacted]
Sent: Friday, March 04, 2011 11:12 AM
To: Brett D. Jaffe
Subject: Ghislaine Maxwell

Dear Brett Jaffe,

I left you a telephone message earlier. The Mail on Sunday newspaper is running a story on Ghislaine Maxwell, Jeffrey Epstein, Prince Andrew and others this weekend.

We urgently require responses from Ms Maxwell to the following questions. Our deadline is noon tomorrow. My telephone numbers are [redacted] or [redacted]

Annette Witheridge
On behalf of the Mail on Sunday

1. [redacted] says Ghislaine Maxwell offered her a job as a masseuse with Jeffrey Epstein when she was aged 15. Ms Maxwell led [redacted] upstairs on her first visit to him at his Palm Beach house. Mr Epstein was naked on massage table.
Ms Maxwell initiated a bisexual encounter during which Ms Maxwell rubbed her own breasts on Mr Epstein and directed [redacted] to copy her.

Please respond to these allegations and all others in the original Jane Doe 102 complaint.

2. Ms Maxwell took part in numerous other sexual encounters involving her assistant [redacted], [redacted] and Mr Epstein.

3. Ms Maxwell kept sex toys and costumes in the Palm Beach mansion and dressed [redacted] prior to sex sessions with Mr Epstein. S Maxwell herself wore black vinyl during sex sessions with Mr Epstein.

4. [redacted]was paid between US $200 and $ 5000 US sex, depending on whether it involved travel and other men.

5, [redacted]was required to have sex with friends of Ms Maxwell and Mr Epstein, including Glenn Dubin, Les Wexner, Ehud Barak, former Senator George Mitchell and Stephen Kosslyn.

6. Ms Maxwell introduced [redacted] to Prince Andrew in 2001 at Ms Maxwell's London house where [redacted] had sex with him. [redacted] subsequently was directed to meet him at Mr Epstein's New York house where Ms Maxwell directed to sit on Andrew's knee with [redacted]. Andrew groped both girls. Ms Maxwell directed after this to have sex with Andrew.
Ms Maxwell and Mr Epstein subsequently travelled with [redacted]to Little St James where she was directed to stage an orgy for Andrew and Mr Epstein during which she performed oral sex on them.

7. [redacted]was paid extra by Mr Epstein or his employees for these sexual encounters.

8. Ms Maxwell knew [redacted] age and laughed about it when she introduced her to Andrew.

9. Ms Maxwell and Mr Epstein tried to persuade [redacted] to bear his child.

10. After sexual encounters with male friends of Mr Epstein and/or Ms Maxwell, Ms Maxwell and Mr Epstein would ask [redacted] explicit questions about what went on.

11. Mr Epstein's residences in Florida and New York had surveillance cameras that taped the sex sessions and taped [redacted] even in the bathroom.

12. Ms Maxwell and Mr Epstein arranged for Ehud Barak to have sex with several girls, often at Mr Epstein's Palm Beach house. -

13. Ms Maxwell piloted President Bill Clinton in a helicopter to a dinner on Little St James where two brunettes Ms Maxwell, [redacted] and Mr Epstein were at the table.

14. Mr Epstein bought Ms Maxwell the helicopter, homes in New York and London and a Mercedes.

------ End of Forwarded Message

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confidential, may be attorney-client privileged, may
constitute inside information, and is intended only for
the use of the addressee. It is the property of
Jeffrey Epstein
Unauthorized use, disclosure or copying of this
communication or any part thereof is strictly prohibited
and may be unlawful. If you have received this
communication in error, please notify us immediately by
return e-mail or by e-mail to jeevacation@gmail.com, and
destroy this communication and all copies thereof,
including all attachments. copyright -all rights reserved

Date: Sunday, April 3 2011 07:15 PM
Subject: Re: raw text
From: Jeffrey Epstein <jeevacation@gmail.com>
To: [redacted]

---

try opening in firefox

On Sun, Apr 3, 2011 at 1:50 PM, <[redacted]> wrote:

> Ok. So if you would like [redacted] or [redacted] to call me and possibly they could read off to me.
>
> Sent via BlackBerry by AT&T
>
> ---
>
> **From:** Darren Indyke [redacted]
> **Date:** Sun, 3 Apr 2011 12:54:56 -0400
> **To:** Lesley Groff<[redacted]>
> **Cc:** Jeffrey Epstein<jeevacation@gmail.com>
> **Subject:** Re: raw text
>
> I also could only open 1st doc and don't have Je's highlights from the other docs.
>
> Sent from my iPhone
> On Apr 3, 2011, at 10:08 AM, Lesley Groff <[redacted]> wrote:
>
>> Scott was able to send me the attachments below but there are no highlights. Darren, if you want to call me and read me the highlights, I can type them on a Word Doc as you dictate...(?) (Even when Scott opened them on his end he had no highlights)
>>
>> ---------- Forwarded message ----------
>> From: **Scott Denett** [redacted]
>> Date: Sun, Apr 3, 2011 at 10:04 AM
>> Subject: raw text
>> To: Lesley Groff <[redacted]>
>>
>> According to Friday's *NY Post* Jeffrey Epstein returned to New York City "making wisecracks about his just-ended jail stint for having sex with an underage girl". "I'm not a sexual predator, I'm an 'offender,' " the Wall Street hedge fund manager told *The Post*. "It's the difference between a murderer and a person who steals a bagel," said Epstein.
>> Well that's not exactly the correct analogy...
>> Not only are Epstein's comments brazen, they are arrogant and self-implicating. By telling a reporter "I'm an offender", he seems to be admitting guilt.
>> Which brings me to the big question of the day. Why did Cyrus R. Vance Jr., the Manhattan D.A., allow a Level 3 sex offender (the most dangerous kind) to reside -- even for ten minutes -- in a house that is right next to Central Park and a school? Isn't that unlawful given the housing guidelines for sex offenders?
>> According to the *NYPost*, Epstein's Level 3 designation means that he is at "high risk" to repeat his offense and poses "a threat to public safety."
>> When I rang Vance (twice) to discuss Epstein's residential guidelines he did not take my calls.

According to a few of the attorneys who represented Epstein's victims in the civil cases, the financier never agreed to a psychological evaluation prior to or during his sentence, a requirement of all sexual predators.

While Epstein's self-incriminating statements are published (this week he told the *Post* "the crime that was supposedly committed in Florida is not a crime in New York" -- an interesting choice of words -- he continues to mock the law that applies to all other sex offenders who are found guilty of the same crime.

Epstein served 13 months in the West Palm Beach Stockade and 18 months under community control (a rather permissive version of house arrest), for 2 Counts of Solicitation of Prostitution with a Minor.

In August of 2010, immediately following his release from "community control", Epstein returned to his $50 million East 71st Street town house given to him by his former client and long time friend Leslie Wexner.

Just in the last few weeks he held a house warming dinner to celebrate his release from jail and reportedly invited television reporters Katie Couric, Charlie Rose, George Stephanopoulus and his close friend, HRH Prince Andrew, according to the *NY Post*.

You would think these professional television reporters would have done their homework prior to accepting his invitation no matter how desperate they were to rub elbows with Prince Andrew.

According to a 53-page sealed indictment Epstein was facing 10 years to life on multiple counts of statutory rape, and child sex trafficking.

Court documents in that case claimed he routinely sought out girls as young as 14 and paid them $200 to $1,000 for sexually explicit massages in his homes in Palm Beach, Fla., and Manhattan.

In the New York sex-offender database, Epstein isn't registered under a zip code rather a "name search" option that does not list his New York address.

The reason for this is because Epstein's Upper East Side home is considered "temporary" and by NY state law, he is required to provide only his permanent address to the database.

Epstein is currently listed under his Florida home even though he is no longer a Florida resident either (after his arrest he immediately became a US VI resident), but then again who's keeping count?

Once again these are mere technicalities when it comes to Epstein's sexual predator case. The two most disturbing parts of this story are that this could easily happen again and that once again there will be no justice.

Had Epstein been a caring benefactor contributing to society and these young girl's education and well being then the world would have judged him differently.

What he has done instead is the exact opposite -- causing enormous damage to hundreds of underage girls who could have been sponsored towards a better education.

With respect to Manhattan DA Cyrus Vance, I'm confused by his decision to allow this sexual predator to live at his Fifth Avenue house all this time (since August 2010), given his rather tough stance on gun control as witnessed by his testimony in Friday's *NYPost* when asked about a Florida driver cleared in a Manhattan weapon's charge, "guns brought illegally into New York City" he said, " for any reason violate well established state laws and are a threat to our public safety".

Then wouldn't a registered sex offender living 500 feet from a park (Central Park where young girls congregate), and with resources to spare be an even more dangerous threat to society?

The Billionaire Pedophile's Sex Den

by Conchita Sarnoff javascript:void(0)

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- http://www.thedailybeast.com/blogs-and-stories/2010-07-22/jeffrey-epstein-pedophile-billionaire-and-his-sex-den/full/
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- Email
- javascript:void(0)

Newscom **Hedge fund mogul and sex offender Jeffrey Epstein, who went free this week, lived in a depraved world of thrice-daily massages, pornographic artwork, and hush money—that's only now being revealed. Conchita Sarnoff reports on the sordid details in part two of her exclusive exposé. Also:**

- **Nude images of young girls were scattered around the house and the bathroom soap was shaped like sex organs**
- **Staff trolled for fresh recruits to make sure Epstein had two or three massage appointments each day**
- **The house manager has been sentenced to a longer prison term than Epstein—for trying to sell notes regarding massage appointments**
- **Epstein gave $1 million to his friend Jean Luc Brunel when he was starting the modeling agency MC2**
- **According to a former bookkeeper, young girls were brought to the U.S. by MC2—often from Eastern Europe—then traveled on Epstein's private jets**

Jeffrey Epstein's loyal friends say that his prosecution was unduly harsh, rather than outrageously lenient. They insist that his sexual habits, although obsessive and unusual, were mostly legal and essentially harmless. As the police records attest, the girls brought to El Brillo Way were routinely told they could "say no" at any time during a massage as Epstein escalated contact in a step-by-step assault that was remarkably similar in every victim's statement: First she would be asked to remove her shirt, then her pants. He would attempt to fondle her buttocks and breasts as he masturbated, then bring out a large vibrator. There was sometimes digital penetration, and the more willing girls were lured into full-blown sexual relations with both Epstein and Nadia Marcinkova, who was referred to in press accounts and police reports as Epstein's live-in "sex slave."

A former bookkeeper in the Miami office, who also arranged visas for girls traveling to the U.S., confirmed that MC2 girls became frequent guests on Epstein's private jets.

It's true that some underage girls may have lied about their age, and some came to the house voluntarily several times—although, according to Florida statutes, none of that has any bearing on the criminality of the contact, particularly if the girl was 16 or younger. But what is particularly disturbing about this case—judging by arrangements at the Palm Beach house—is that Epstein, a billionaire hedge-fund manager, organized his life around this sexual compulsion in an open and methodical way that suggests he felt he was beyond the law.

- Conchita Sarnoff: Epstein Faces Sex Traffic Probe
- Billionaire Pedophile Goes Free

According to police who executed a search warrant, the house was decorated with large, framed photos of nude young girls, and similar images were found stashed in an armoire and on the computers seized at the house (although police found only bare cables where other computers had been). Some bathrooms were stocked with soap in the shape of sex organs, and various sex toys, such as a "twin torpedo" vibrator and creams and lubricants available at erotic specialty shops, were stowed near the massage tables set up in several rooms upstairs.

Epstein also enlisted his staff in the predatory activity, and four—Sarah Kellen, Adriana Ross, Lesley Groff, and Marcinkova—figured in the FBI investigation. The Non Prosecution Agreement stipulated that they would not be charged. According to police reports and sworn statements in the civil suits, all four women, among their other duties, worked to ensure that an appointment book for twice- or thrice-daily "massages" was stocked with fresh recruits. Ghislaine Maxwell, daughter of the late Czechoslovakian-born press baron Robert Maxwell, who was for many years Epstein's live-in partner, also recruited young girls.

Since his 13-month sentence for soliciting prostitution with a minor, Epstein has settled more than a dozen lawsuits brought by underage girls. Seven victims reached a last-minute deal last week, days before a scheduled trial; each received well over $1 million—an amount that will hardly dent Epstein's $2 billion net worth.

The victims told police they waited in the kitchen to be called upstairs for a massage, and the house chef often gave them a bite to eat. House manager Alfredo Rodriguez said in his sworn statement that a maid named Lupita, who was a devout Catholic, wept when she complained to him about cleaning up after the massage sessions, picking up soiled towels and putting away the sex toys. And she was upset that a photo of Epstein with the pope hung next to one of him with a young girl.

Ironically, Rodriguez, who ran the house on El Brillo Way in 2004 and 2005, ended up being sentenced to more jail time than his boss as a result of the complex investigation into Epstein's activities. He was fired, he says, for inadvertently drawing police attention to one of the girls when she arrived at the house unannounced to collect money. He saw an unfamiliar "beater" in the driveway one evening and called 911. When he left Epstein's employ, Rodriguez took away some notes and emails about massage appointments as "protection" against his own prosecution, and failed to produce them during the Palm Beach Police Department's initial investigation.

- javascript:;javascript:;
- http://www.thedailybeast.com/blogs-and-stories/2010-07-22/jeffrey-epstein-pedophile-billionaire-and-his-sex-den/full/
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Unable to get work as a house manager elsewhere in South Florida, he says, Rodriguez later tried to sell this "golden nugget"—his term—for $50,000, to be used in the victims' civil suits. Unfortunately, he made the offer to an undercover cop, and was subsequently charged with "obstruction of official proceedings" for withholding information that could have advanced the criminal investigation of Epstein—which by that point had been settled in a plea deal. Rodriguez was sentenced to 18 months in federal prison (Epstein was allowed to serve 13 months in the Palm Beach county jail), and now awaits an additional sentence on Aug. 24 in federal court in Miami for transporting firearms, another deal he says he made to pay the bills after he lost his job.

In a deposition given for the civil suits, Rodriguez testified that he was instructed to always have $2,000 in cash on hand, so that he could pay both the girls who gave massages and recruiters such as Haley Robson who brought them to the house. He also testified that Epstein made large contributions to the Palm Beach Police Department, and in return was given PBPD baseball hats to put on the dashboard of his various cars to avoid being stopped or ticketed by local police. Retired Police Chief Michael Reiter, in his own deposition, acknowledged that, in addition to earlier donations to the police department (which are fairly common in well-heeled Palm Beach), Epstein had recently given the department $100,000 for some sophisticated equipment. The police were still researching the purchase when Epstein came under suspicion, and Reiter ordered the money returned. (Guy Frostin, one of Epstein's local attorneys, told police that Epstein also gave $100,000 to the Florida Ballet for massages, because he was "very passionate" about massages being "therapeutically and spiritually" beneficial. Yet victims told police they had no massage training.)

Perhaps most disturbing, in terms of possible sex trafficking, was Epstein's relationship with Jean Luc Brunel, owner of the MC2 modeling agency. According to a complaint filed in the U.S. District Court for the Southern District of Florida, an alleged victim said that Epstein, Maxwell, Brunel, Rodriguez, and Marcinkova "deliberately engaged in a pattern of racketeering that involved luring minor children through MC2, mostly girls under the age of 17, to engage in sexual play for money." (Which would amount to trafficking.)

Brunel is a 50-plus French playboy who was formerly part owner of Karin, a Paris-based modeling agency. He lives in New York and South Beach, Florida, and owns 85 percent of MC2, which has offices in New York, Miami, and Tel Aviv. (The remaining 15 percent is owned by his partner, Jeff Fuller.) Brunel has been observed as a house guest at Epstein's Palm Beach home and may well have had contact with him also in New York, where Epstein owns a lavish home, and in Paris, where Epstein keeps an apartment on elegant Ave. Foch.

CBS reporter Craig Pyes, who investigated Brunel for a *60 Minutes* broadcast many years ago, is quoted in Michael Gross' book about the modeling industry, *Model: The Ugly Business of Beautiful Women*.

Pyes told the author that Brunel "ranks among the sleaziest people in the fashion industry. We're talking about a conveyor belt, not a casting couch. Hundreds of girls were not only harassed but molested." Now The Daily Beast has learned that Epstein had made a $1 million wire transfer to Brunel's offshore bank account in September 2004, just as he was setting up MC2. Whether this was a gift or a loan or a backdoor investment in the new venture is unknown. A French citizen who managed to avoid giving evidence in the Epstein investigation, Brunel declined to comment on any of this, as does Fuller. Asked in April of Brunel's activities, Epstein said "I'm 100 percent convinced that he doesn't traffic children." (Brunel has never been charged.)

An American fashion designer who booked her girls through MC2 says they were very young and very beautiful; many were from Eastern Europe and spoke little English. A former bookkeeper in the agency's Miami office, who also arranged visas for girls traveling to the U.S., confirmed that MC2 girls became frequent guests on Epstein's private jets.

Pilot logs obtained in the civil suits show that some of the named plaintiffs were on the flight manifests. Other times, the pilot would just list the other passengers plus "female."

Posted 02 August 2010 - 12:47 AM

Jeffrey Epstein, Jew Billionaire Pedophile, Child Trafficker Goes Free..WoW! 20 year old Hearsay is enough to destroy catholic priest. What happened here to the justice system?

Conchita Sarnoff

http://www.thedailyb...hile- goes-free/

Conchita Sarnoff has developed multimedia communication programs for Fortune 500 companies and has produced three current events debate television programs, The Americas Forum, From Beirut to Kabul, and a segment for The Oppenheimer Report. She is writing a book about child trafficking in America.

Hedge fund mogul and sex offender Jeffrey Epstein, who went free this week, lived in a depraved world of thrice-daily massages, pornographic artwork, and hush money—that's only now being revealed. Conchita Sarnoff follows up on her investigation of the legal wrangling that saved him from a long prison term and reports on the sordid details in part two of her exclusive exposé. Also:

- Palm Beach's police chief objected to Epstein's "special treatment" and gave The Daily Beast an exclusive look at his nine-hour deposition about the investigation.

- Earlier versions of the U.S attorney's charges, including a sealed 53-page indictment, could have landed Epstein in prison for 20 years.

- Victims alleged that Epstein molested underage girls from South America, Europe, and the former Soviet republics, including three 12-year-old girls brought over from France as a birthday gift.

- The victims also alleged trips out of state and abroad on Epstein's private jets, which would be evidence of sex trafficking—a much more serious federal crime than the state charges Epstein was convicted of.

- Epstein's attorneys investigated members of the Palm Beach Police Department, while others ordered private investigators to follow and intimidate the victims' families; one even posed as a police officer.

- Then-Attorney General Alberto Gonzales told The Daily Beast that he "would have instructed the Justice Department to pursue justice without making a political mess."

Film director Roman Polanski is not the only convicted pedophile to walk free this month and return to a life of privilege. On Wednesday, hedge fund manager Jeffrey Epstein completes his one-year house arrest in Palm Beach, which has been even less arduous than Polanski's time at a Swiss ski chalet.

Watch Jeffrey Epstein Storm Out of a Deposition When Asked About His Penis

During Epstein's term of "house arrest," he made several trips each month to his New York home and his private Caribbean island. In the earlier stage of his sentence for soliciting prostitution with a minor—13 months in the Palm Beach Stockade—he was allowed out to his office each day. Meanwhile, Epstein has settled more than a dozen lawsuits brought by the underage girls who were recruited to perform "massages" at his Palm Beach mansion. Seven victims reached a last-minute deal last week, days before a scheduled trial; each received well over $1 million—an amount that will hardly dent Epstein's $2 billion net worth.

- Conchita Sarnoff: Epstein Faces Sex Traffic Probe
- The Billionaire Pedphile's Sex Den

With that, the known victims of Epstein's sexual compulsion have been officially silenced, and the case against him is closed unless new ones come forward. According to banking sources, he has been moving assets out of the U.S. and may well follow Polanski into a luxurious exile.

But the question remains: Did Epstein's wealth and social connections—former President Bill Clinton; Prince Andrew; former Israeli Prime Minister Ehud Barak; New Mexico Gov. Bill Richardson; and former Treasury Secretary Larry Summers were just a few of the prominent passengers on his private jets—allow him to receive only a slap on the wrist for crimes that carry a mandatory 20-year sentence? Was he able, with his limitless assets and heavy-hitting lawyers—Alan Dershowitz, Gerald Lefcourt, Roy Black, Kenneth Starr, Guy Lewis, and Martin Weinberger among them—to escape equal justice?

Epstein Faces Sex-Traffic Probe
http://www.thedailyb...obref=obnetwork

The Justice Department is investigating Jeffrey Epstein for child trafficking, The Daily Beast has learned—and has widened the scope of its probe to include a famous modeling agency.

Hedge-fund manager Jeffrey Epstein completed his sentence for soliciting prostitution with a minor last week. But it appears his problems may not be over. Now The Daily Beast has learned that:

- Federal investigators continue to investigate Epstein's activities, to see whether there is evidence of child trafficking—a far more serious charge than the two in his non-prosecution agreement, the arrangement between Epstein and the Department of Justice allowing him to plead guilty to lower-level state crimes. Trafficking can carry a 20-year sentence.

- The FBI is also investigating Epstein's friend Jean Luc Brunel, whose MC2 modeling agency appears to have been a source of girls from overseas who ended up on Epstein's private jets.

Because Epstein's predatory habits stretch back many years and involved dozens of young-looking girls, there may well be more evidence to uncover.

Under the concept of double jeopardy, Epstein can no longer be prosecuted for any of the charges covered by his non-prosecution agreement, in which he agreed to serve a short term of incarceration, fund the civil suits of named victims, and register as a sex offender. The victims who accepted cash settlements in these civil suits agreed not to testify against him or speak publicly about the case. However, new evidence developed by the Department of Justice on other offenses not covered by the agreement, including allegations by additional victims who come forward, could lead to new charges. There is no statute of limitations in the federal sex-trafficking law, which was also enacted by the state of Florida in 2002. Because his predatory habits stretch back many years and involved dozens of young-looking girls, there may well be more evidence to uncover. (Several young women who claim to be Epstein victims have recently contacted a Ft. Lauderdale lawyer, but to date no new civil complaints have been filed.)

- Conchita Sarnoff: The Billionaire Pedphile's Sex Den
- Billionaire Pedophile Goes Free

These new developments come one week after the publication of two articles in The Daily Beast about Epstein's pattern of sexual contact with underage girls, which Palm Beach police began investigating in 2005 and the U.S. Attorney's office then settled in a 2007 plea deal. The first article quoted a deposition by then-Palm Beach Chief of Police Michael Reiter, in which he stated that Epstein, a billionaire with many powerful friends, had received special treatment in both his plea deal and the terms of his incarceration. Although federal investigators at one point produced a draft 53-page indictment against Epstein, he was eventually allowed to plead guilty to only two relatively minor state charges and receive a short term of incarceration: 13 months in the county jail, during which he went to the office every day, and one year of community control, during which he traveled frequently to New York and his private island in the Virgin Islands.

The Daily Beast has now discovered another instance in which Epstein apparently received special consideration: As a convicted sex offender, he is required by law to undergo an impartial psychological evaluation prior to sentencing and to receive psychiatric treatment during and after incarceration. This is because child molesters tend to be repeat offenders with high rates of recidivism. According to a source in law enforcement, however, Epstein was allowed to submit a report by his private psychologist, Dr. Stephen Alexander of Palm Beach, Florida, whose phone has since been disconnected with no forwarding information.

The Daily Beast's second article provided details about Epstein's systematic abuse of underage girls at his Palm Beach mansion, where members of his staff allegedly recruited and paid a parade of teenagers, most of them 16 or younger, to perform daily massages that devolved into masturbation, groping, and sometimes full-blown sexual contact. It also revealed a monetary relationship between Epstein and Jean Luc Brunel, a frequent visitor to whom he gave $1 million around the same time that Brunel was starting his MC2 modeling agency. Some of the young girls MC2 recruited from overseas—often from Eastern Europe and South America—are known to have been passengers on Epstein's private jets.

The U.S. Attorney General's Office in Florida says that it is against policy to confirm or deny the existence of an investigation. Jeffrey Epstein's lawyer, Jack Goldberger, says he has no knowledge of an ongoing probe, and he told The Daily Beast, "Jeffrey Epstein has fully complied with all state and federal requirements that arise from the prior proceedings in Palm Beach. There are no pending civil lawsuits. There are not and should not be any pending criminal investigations, given Mr. Epstein's complete fulfillment of all the terms of his non-prosecution agreement with the federal government."

Conchita Sarnoff has developed multimedia communication programs for Fortune 500 companies and has produced three current-events debate TV programs, The Americas Forum, From Beirut to Kabul, and a segment for The Oppenheimer Report. She is writing a book about child trafficking in America.
0

#2 bruce

- Registered User
-
- Group: Members

- Posts: 11113
- Joined: 12-August 08

Posted 02 August 2010 - 12:59 AM
These slugs leave slime wherever they go.america is owned by these pigs.filthy pigs.
0

- Joined: 12-August 08

Posted 02 August 2010 - 12:59 AM
These slugs leave slime wherever they go.america is owned by these pigs.filthy pigs.
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From: Jeffrey Epstein <jeevacation@gmail.com>
Sent: Thursday, January 31, 2013 11:37 AM
To: [redacted]
Subject: Re:

yes but with a 2.2 billion dollar top. most planes are above 100 each, hence the issue

On Thu, Jan 31, 2013 at 7:32 AM, [redacted] wrote:

> Apparently Brazil is a hot investment place now (?) It is more about the offset part than the jet deal. France, Sweden and USA are all lobbying to get the jet deal as aviation is tied into potentially big tourism deals. (36 planes)
> I was just on a call with a guy in Sweden who is dealing with this...
> I never know if the stories are real, but he claims to work with the Brazilian president, Obama, Warren Buffet etc..
>
> ---
>
> **From:** Jeffrey Epstein <jeevacation@gmail.com>
> **To:** [redacted]
> **Sent:** Thursday, January 31, 2013 5:47 AM
> **Subject:** Re:
>
> brazil , has tried to buy fighters, in the past, they don't have a lot of money,
>
> On Thu, Jan 31, 2013 at 6:36 AM, Nadia <[redacted]> wrote:
>
> > Hmm, so the offset service provider does what - negotiation between the parties? Complex sounds interesting...
> >
> > ---
> >
> > **From:** Jeffrey Epstein <jeevacation@gmail.com>
> > **To:** [redacted]
> > **Sent:** Thursday, January 31, 2013 3:36 AM
> > **Subject:** Re:
> >
> > Yes , one of the most complex negotiations they re very strange. Someone buys fighters but with the fighter money , some must be used for specific third party items. I will buy your pussy for 10k, but with 2 of the 10 you have to buy me food. And to make matter worse I need to borrow thev10 from you.
> >
> > On Thursday, January 31, 2013, [redacted] wrote:
> >
> > > Do you understand offset agreements? I got asked to be involved in negotiating some of the deals between Brazil and other countries in regards to the purchase of new fighter jets..
> > >
> > > What is an offset service provider?
> >
> > --
> > **
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From: Vinit Sahni [redacted]]
Sent: 3/14/2014 2:24:19 AM
To: jeevacation@gmail.com
CC: Paul Morris [redacted]
Subject: Re: Oil options
Attachments: graycol.gif

Importance: High

Classification: External Communication

I am on a plane to and from tokyo tomorrow next 2-3 days, if u need something otherwise available 24/7 on +447703720599.

Vinit Sahni

----- Original Message -----
From: Vinit Sahni
Sent: 03/13/2014 09:47 PM EDT
To: jeevacation@gmail.com
Cc: Paul Morris
Subject: Fw: Oil options
Classification: External Communication

Jeffrey - apologise if this long to execute next time we'll be much quicker.

Nav Gupta

----- Original Message -----
From: Nav Gupta
Sent: 03/12/2014 09:35 PM GDT
To: "jeevacation@gmail.com" <jeevacation@gmail.com>
Cc: Tazia Smith; Paul Morris/db/[redacted]; Vinit Sahni/db/[redacted]
Subject: Oil options
Jeffrey

Just got off the phone with Vinit.
DB stopped marketmaking OTC oil options - for short dated I'd go for exch traded - better liquidity and lower transaction costs in and out.

My central scenario - Kerry Lavrov meeting Friday will be a bust and the Crimea referendum this weekend will result in "yes" given the 59pct ethic Russian makeup. Sunday/ Monday sanction rhetoric from ranging from g8 expulsion to Iran-style bank embargo is raised a notch. Russia follows with more threats of counter-sanctions. My sense is the Obama 5m of 696m SPR release is to show Merkel and co he will step in. He needs to because there are 8 small European and Baltic countries that rec 70%+ of their gas from Russia. Germany gets 30%.

Cross asset correlations outside of the US are increasing past few days - eg copper and the Turkish lira hourly charts are on top of each other past 4 days. I'm worried there is a 30-40pct(?) chance of a hard risk off move in markets in first half of next week - more focused on European equities, copper, EM FX (Turkey, ZAR, Ruble etc) than SPX. In that scenario oil is way up.

Exchange WTI calls - there are 2 options (as of 3pm est):

5day expiry 17march 2014 underlying clj4 97.92
and
35d expiry 16april2014 underlying clk4 97.59

** The 5 day options are a bit short - one possibility is sell a 3usd out of the money put (95.5 strike) for 20cents and buy a 2usd OTM 100 call for 25. Net pay 5cents. But 5d is a bit short for me.

**For 35d expiry You could look at selling 91.50 (6usd OTM put) for 56cents and buying 103c (5.5usd OTM) for 58cents or the 102c (4.5usd OTM) for 76cents.

CL1 <comdty> OMON on Bloomberg has live strikes and bid/ask.

If 5d is too short and 35d is too long / not enough gamma, Tazia may be able to source liquidity from the street. Am Cc'ing her for any live pricing or additional comment

Best
Nav
[redacted]c
h

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From: Vinit Sahni [redacted]]
Sent: 3/14/2014 4:41:47 AM
To: Jeffrey Epstein [jeevacation@gmail.com]
Subject: Re: Oil options

Importance: High

Classification: External Communication

Agree will address, need to fix this.
Back mid day tuesday from tokyo.

From: Jeffrey Epstein [jeevacation@gmail.com]
Sent: 03/13/2014 11:39 PM AST
To: Vinit Sahni
Subject: Re: Oil options

thanks 4 hours for a quote in a normally fast moving market ? confirms my voiced concerns

On Thu, Mar 13, 2014 at 10:24 PM, Vinit Sahni <[redacted]> wrote:

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>
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>
> Vinit Sahni
>
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> **To:** jeevacation@gmail.com
> **Cc:** Paul Morris
> **Subject:** Fw: Oil options
>
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> Jeffrey - apologise if this long to execute next time we'll be much quicker.
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>
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> **Cc:** Tazia Smith; Paul Morris/db/[redacted] Vinit Sahni/db/[redacted]
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Best
Nav
[redacted]

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From: Weingarten, Reid [[redacted]]
Sent: 3/15/2017 12:14:18 PM
To: jeffrey E. [jeevacation@gmail.com]
Subject: Re:

Importance: High

Corruption...client is Richard ireland

Sent from my BlackBerry 10 smartphone.

From: jeffrey E.
Sent: Wednesday, March 15, 2017 8:12 AM
To: Weingarten, Reid
Subject: Re:

turk or...

On Wed, Mar 15, 2017 at 8:08 AM, Weingarten, Reid <[redacted]> wrote:

> Pennsylvania
>
> Sent from my BlackBerry 10 smartphone.
>
> ---
>
> **From:** jeffrey E.
> **Sent:** Tuesday, March 14, 2017 10:52 PM
> **To:** Weingarten, Reid
> **Subject:** Re:
>
> Which case
> On Tue, Mar 14, 2017 at 9:55 PM Weingarten, Reid <[redacted]n> wrote:
>
> > Bet trump leaked the 2 pages...cross the government's star witness tomorrow...it's odd I still do this shit...
> >
> > Sent from my BlackBerry 10 smartphone.
> >
> > ---
> >
> > **From:** jeffrey E.
> > **Sent:** Monday, March 6, 2017 10:59 AM
> > **To:** Weingarten, Reid
> > **Subject:**
> >
> > jack morris partner marino could be the problem forlicencing. ribis can help i think
> >
> > --
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Describe WE Talks, and why you believe it's different from other "empowerment series."

WE Talks ("WE" standing for women empowerment) is an event series for female entrepreneurs and professionals organized on a monthly basis. The idea of WE Talks was to create an intimate environment where our attendees can build relationships in an organic way, based on mutual interests and shared values. We encourage our guests to learn not only from our speakers, but also from each other, to connect exchange contacts, and stay in touch. WE Talks is a "safe space," where it is ok to express your vulnerability (most speakers on our panel address not only their past challenges, but also the current pressing issues), and to ask the community for support and guidance. We also hope that as our community grows, our members meet future business partners, advisors, investors, and friends.

After attending many business events in NYC and internationally, I have noticed that women are less likely to network and introduce themselves than their male peers. That's why, at every event that we host we try to make curated introductions and make sure that each guest meets at least three people relevant to her business.

Part of the inspiration for WE Talks was birthed from a negative experience at a popular "empowerment" event. Share that story and how it motivated you to start WE Talks.

Ever since I moved to NY, I have been searching for a community where I would feel comfortable and could turn for guidance. A while ago, I attended a very interesting and intellectually stimulating women summit aimed at empowering female founders and helping them scale up. As the second day of the conference was coming to an end, the participants were encouraged to publicly express their take always. After a long hesitation, I asked for the microphone. It was a big challenge for me, being terrified of public speaking and English being only my third language. I am not sure whether my manner of speaking, or my accent was the reason why the host cut me off after 10 seconds and asked to hurry. After not getting the support I had been looking for from something that was described as the most inclusive and friendly community, I decided to start my own. At WE Talks, we are very inclusive and don't make judgements based on your accent or physical appearance. If you are driven, ambitious, thoughtful, and giving - you are always welcome here!

Why is now a more important time than ever for a WE Talks?

I believe the women movement to be one of the most fascinating phenomena of our times. The woman's role has changed so much in modern society with more women taking leadership positions and starting their own companies. The modern woman is wearing more hats than ever. In the 80-s, a successful woman was expected to pursue an education and then to get married and raise children. Right now, women are expected to have successful careers, be equal financial contributors to the family, and yet maintain their traditional "feminine" roles, including taking care of the home, cooking, and raising kids.

Yet women with full-time jobs still earn only about 77 percent of their male counterparts' earnings. About four-in-ten employed women say they have experienced some form of gender discrimination at work. There is also a serious gender gap in startup rates of men and women, where there are about seven women entrepreneurs for every ten men entrepreneurs. The statistics is pretty gloomy in both corporate and startup world. The share of female Fortune 500 CEOs has dropped by 25% in 2018 to 5%. Female founders receive only 2% percent of the venture capital. Nevertheless, female-founded startups generate more revenue and do it with less funding.

I think networking a paramount to business and personal success. For ages, men had men only clubs, including cigar clubs, university clubs, golf clubs etc. Even nowadays, male investors and intrapreneurs would go out for drinks and talk about business. Women are starting to do it, but just don't do it enough. Curated networking, right introductions, and a solid community would help narrow the gender gap.

You were a model, then ran a nonprofit, and now you've started WE Talks. Where did you learn to have the courage to "put yourself out there" and take risks again and again?

I think risk taking is in my DNA. I grew up playing tennis competing on a Junior Circuit and simply couldn't envision a predictable and "normal" life in Moscow. I come from a very patriarchate society where women are encouraged to study and to meet future husband in the their early 20s, then to get married and to take care of the home. The entrepreneurship “à la russe” usually includes your husband or father “buying” a beauty salon/ retail brand/ fashion magazine and the woman “running it”, usually without a solid understanding how business operates and mostly without ever becoming profitable. It just wasn’t for me. My biggest fear in life was not that of failure, but that of leading the most predictable life in Moscow and being like everyone else. I saw modeling not as long-term career path, but a way to explore the world, gain financial independence, and eventually move to the US (I got denied for a tourist visa but approved for a work permit in the fashion industry). My parents and friends thought I was completely out of my mind when I quit a well-paid job in finance to move to Milan, but in less than two years I had enough savings to invest in real estate in Russia (one of the best investment decisions I have ever made).

Modeling is one of the most competitive industries in the world where thousands of women compete for one job. The supply outweighs the demand dramatically, and consequently most models (even the most accomplished ones) have to face rejection on a daily basis. Embracing rejection and maintaining confidence at the same time is one of the most important lessons I have learned from modeling.

What's a challenge or failure you've faced in your journey thus far? From growing up in an intellectual family in Moscow until now. How did you get through that challenge? What did you learn from it that has led to your entrepreneurial resilience today?

I grew up in the 90-s in Moscow, one of the most dramatic and controversial times in Russian history. When Soviet Union collapsed, my family was on the one hand excited about the future opportunities, but in the other hand, completely unprepared for capitalism. In order to provide, both of my parents had to quit high rank government jobs and to start their careers from scratch trying to embrace entrepreneurship – something that used to be condemned during the communist regime. In 1998, Russia experienced one of the worst financial crises in its history, resulting in our government defaulting on its debt. The situation was so unstable and unpredictable that my parents thought it would be safer for me to get enrolled in college two years earlier than I was supposed to. We just couldn’t predict what would happen next. I took high school graduation tests and then the college entrance exams (Russian system din not have SATs back then and every college required students to take particular exams to be admitted).

My family has always placed a high value on education and the only option we thought would help me succeed in life was the Moscow State University of Foreign Relations, famously referred to as “Harvard of Russia” by Henry Kessinger. My entrance grades were excellent and I got the state scholarship covering my tuition and living costs. Most of the students studying with me were coming from a completely different “oligarchy” world, driving (or being driven) the most expensive cars in the world and being accompanied by bodyguards. Girls would fly to Milan and Paris to shop the latest Chanel collections. I was an outlier, a normal kid, taking a bus and commuting for 2 hours to get to school. And I was pretty unhappy feeling that just didn’t belong to this world and got there by mistake. Not having many friends, I focused on my studies, graduating Cum Laude top on the class with only “A” grades in my diploma. Now looking back, I am incredibly grateful for something I used to see as a traumatizing experience. I would have never grown up as ambitious and resilient had I been given all the opportunities my peers had at a young age.

What's the biggest challenge(s) you're currently facing as you grow WE Talks - personally and/or professionally - and what are you doing to navigate that challenge(s)?

WE Talks started as an idea and became a rapidly growing community. We were expecting just about 30 attendees at our first gathering, but ended up having over 50 guests. Consequently, we have been growing at a 50% monthly rate and just had an event in partnership with TOPSHOP with over 100 attendees, including more than 30 entrepreneurs. One of the major challenges would be to keep growing at a sustainable pace and to turn the community into a business.
When I was just starting WE Talks, many told me that the event space market in NY in very saturated and that without a significant experience I the event space it would be incredibly hard to create a quality community. And yet here we are,

Anything else you want us to know?

After hosting a few successful events, WE are planning a bigger and better event in fall. In fact, WE are making a statement that women should not be judged based on their external beauty and should be rewarded for their intellect and hard work.

The majority of our society still emphasizes the importance of female physical qualities, such as beauty, body, or photogenic skills. Miss USA, the famous Beauty Pageant previously owned by Donald Trump, until this summer required the participants to pose in a swimsuit paired with high heels. Effective this year, the show will abolish the bikini contest. We think that it is time to take one step further and to finally start rewarding women for their mind, hard work, and creativity.

Our idea is to host a “Beauty Pageant” for female entrepreneurs and to have the top five finalists do a five-minute pitch in front of our jury. The finalists will not only get a money prize, but also receive a significant exposure to investors and media. We are hoping to get at least a few hundred applications as the application is completely free. Female founders should have equal opportunities and resources to their male counterparts. We hope that our event will encourage other female entrepreneurs and help them advance in their careers.

From: Jeffrey Epstein [jeevacation@gmail.com]
Sent: 3/14/2014 3:39:28 AM
To: Vinit Sahni [redacted]
Subject: Re: Oil options
Attachments: graycol.gif

Importance: High

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Nav
[redacted]

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From: jeffrey E. [jeevacation@gmail.com]
Sent: 8/23/2018 4:01:11 PM
To: Kathy Ruemmler [redacted]
Subject: Re: NYTimes: Donald Trump’s High Crimes and Misdemeanors

ill call you from new york

On Thu, Aug 23, 2018 at 11:55 AM, Kathy Ruemmler <[redacted]> wrote:

> Rich person problem
>
> On Aug 23, 2018, at 11:30 AM, jeffrey E. <jeevacation@gmail.com> wrote:
>
> id, Morris concedes that *American Dharma* could be an uncomfortable experience for those still wrestling with the realities of the Trump era in America: "It's a kind of horror movie," says Morris. "I don't know how better to describe it."
>
>
>
> On Thu, Aug 23, 2018 at 11:13 AM, Kathy Ruemmler <[redacted]> wrote:
>
> > It makes no difference whether it was his money. Issue is failure to disclose. Plus, fact that he has lied his ass off about it makes clear that he knew it was illegal.
> >
> > On Aug 23, 2018, at 11:03 AM, jeffrey E. <jeevacation@gmail.com> wrote:
> >
> > I think he makes the argument that it was his , trumps money , making it not illegal. though he also said he only found out afterwards? and the fact according to the indicment was billed as services rendered and grossed up. im sure his acct has flipped anyway. . I did talk in detail to starr yesterday re indicments how trump can make a deal (special counsel) . clintons trash can yes starr gave me more. YECHHHH! .
> >
> > On Thu, Aug 23, 2018 at 10:50 AM, Kathy Ruemmler <[redacted]> wrote:
> >
> > > Here's a story from The New York Times that I thought you'd find interesting:
> > >
> > > The principled case for impeachment is clear. What’s missing is the courage.
> > >
> > > Read More...
> > >
> > > Get The New York Times on your mobile device
> >
> > --
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NATIONAL LABOR RELATIONS BOARD

29 CFR Part 104

RIN 3142–AA07

Notification of Employee Rights Under the National Labor Relations Act

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: On December 22, 2010, the National Labor Relations Board (Board) issued a proposed rule requiring employers, including labor organizations in their capacity as employers, subject to the National Labor Relations Act (NLRA) to post notices informing their employees of their rights as employees under the NLRA. This final rule sets forth the Board's review of and responses to comments on the proposal and incorporates any changes made to the rule in response to those comments.

The Board believes that many employees protected by the NLRA are unaware of their rights under the statute and that the rule will increase knowledge of the NLRA among employees, in order to better enable the exercise of rights under the statute. A beneficial side effect may well be the promotion of statutory compliance by employers and unions.

The final rule establishes the size, form, and content of the notice, and sets forth provisions regarding the enforcement of the rule.

DATES: This rule will be effective on November 14, 2011.

FOR FURTHER INFORMATION CONTACT: Lester A. Heltzer, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Washington, DC 20570, (202) 273–1067 (this is not a toll-free number), 1–866–315–6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Background on the Rulemaking

The NLRA, enacted in 1935, is the Federal statute that regulates most private sector labor-management relations in the United States.[1] Section 7 of the NLRA, 29 U.S.C. 157, guarantees that

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities[.]

In Section 1, 29 U.S.C. 151, Congress explained why it was necessary for those rights to be protected:

> The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce[.] * * *
>
> * * * * *
>
> Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.
>
> * * * * *
>
> It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Thus, Congress plainly stated that, in its judgment, protecting the rights of employees to form and join unions and to engage in collective bargaining would benefit not only the employees themselves, but the nation as a whole. The Board was established to ensure that employers and, later, unions respect the exercise of employees' rights under the NLRA.[2]

For employees to fully exercise their NLRA rights, however, they must know that those rights exist and that the Board protects those rights. As the Board explained in its Notice of Proposed Rulemaking (NPRM), 75 FR 80410, it has reason to think that most do not.[3] The Board suggested a number of reasons why such a knowledge gap could exist—the low percentage of employees who are represented by unions, and thus lack an important source of information about NLRA rights; the increasing proportion of immigrants in the work force, who are unlikely to be familiar with their workplace rights; and lack of information about labor law and labor relations on the part of high school students who are about to enter the labor force.[4]

Of greatest concern to the Board, however, is the fact that, except in very limited circumstances, no one is required to inform employees of their NLRA rights.[5] The Board is almost unique among agencies and departments administering major

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[1] Labor-management relations in the railroad and airline industries are governed by the Railway Labor Act, 45 U.S.C. 151 *et seq.*

[2] The original NLRA did not include restrictions on the actions of unions; those were added in the Labor-Management Relations (Taft-Hartley) Act of 1947, 29 U.S.C. 141 *et seq.*, Title I.

[3] The Board cited three law review articles in which the authors contended that American workers are largely unaware of their NLRA rights, that the Board can take action to vindicate those rights, and that this lack of knowledge stands in the way of employees' effectively exercising their rights. Peter D. DeChiara, ''*The Right to Know: An Argument for Informing Employees of Their Rights under the National Labor Relations Act,*'' 32 Harv. J. on Legis. 431, 433–434 (1995); Charles J. Morris, ''*Renaissance at the NLRB—Opportunity and Prospect for Non-Legislative Procedural Reform at the Labor Board,*'' 23 Stetson L. Rev. 101, 107 (1993); Morris, ''*NLRB Protection in the Nonunion Workplace: A Glimpse at a General Theory of Section 7 Conduct,*'' 137 U. Pa. L. Rev. 1673, 1675–1676 (1989). 75 FR at 80411.

[4] *Id.*

[5] The Board requires that employees be notified of their NLRA rights in only the following narrow circumstances: (1) For the three working days before a Board-conducted representation election, the employer is required to post a notice of election including a brief description of employee rights; see 29 CFR 103.20. (2) When an employer or a union has been found to have violated employee rights under the NLRA, it is required to post a notice containing a brief summary of those rights. (3) Before a union may seek to obligate newly hired nonmember employees to pay dues and fees under a union-security clause, it must inform them of their right under *NLRB* v. *General Motors,* 373 U.S. 734 (1963), and *Communications Workers* v. *Beck,* 487 U.S. 735 (1988), to be or remain nonmembers and that nonmembers have the right to object to paying for union activities unrelated to the union's duties as the bargaining representative and to obtain a reduction in dues and fees of such activities. *California Saw & Knife Works,* 320 NLRB 224, 233 (1995), enfd. sub nom. *Machinists* v. *NLRB,* 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang* v. *NLRB,* 525 U.S. 813 (1998). The same notice must also be given to union members if they did not receive it when they entered the bargaining unit. *Paperworkers Local 1033 (Weyerhaeuser Paper Co.),* 320 NLRB 349, 350 (1995), rev'd. on other grounds sub nom. *Buzenius* v. *NLRB,* 124 F.3d 788 (6th Cir. 1997), vacated sub nom. *United Paperworkers Intern. Union* v. *Buzenius,* 525 U.S. 979 (1998). (4) When an employer voluntarily recognizes a union, the Board has required that the employer must post a notice informing employees: (i) That the employer recognized the union on the basis of evidence that it was designated by a majority of the unit employees; (ii) the date of recognition; (iii) that all employees, including those who previously signed cards for the recognized union, have the right to be represented by a labor organization of their choice, or no union at all; (iv) that within 45 days of the date of the notice a decertification or rival petition, supported by 30 percent or more of the unit employees, may be filed with the Board and will be processed to an election; and, (v) that if no petition is filed within 45 days, the recognition will not be subject to challenge for a reasonable period to allow the employer and union to negotiate a collective-bargaining agreement. *Dana Corp.,* 351 NLRB 434 (2007).

Federal labor and employment laws in not requiring employers routinely to post notices at their workplaces informing employees of their statutory rights.[6] Given this common practice of workplace notice-posting, it is reasonable for the Board to infer that a posting requirement will increase employees' awareness of their rights under the NLRA.[7] Further support for that position is President Obama's recent Executive Order 13496, issued on January 30, 2009, which stressed the need for employees to be informed of their NLRA rights. Executive Order 13496 requires Federal contractors and subcontractors to include in their Government contracts specific provisions requiring them to post notices of employees' NLRA rights. On May 20, 2010, the Department of Labor issued a Final Rule implementing the order effective June 21, 2010. 75 FR 28368, 29 CFR part 471.

After due consideration, the Board has decided to require that employees of all employers subject to the NLRA be informed of their NLRA rights. Informing employees of their statutory rights is central to advancing the NLRA's promise of ''full freedom of association, self-organization, and designation of representatives of their own choosing.'' NLRA Section 1, 29 U.S.C. 151. It is fundamental to employees' exercise of their rights that the employees know both their basic rights and where they can go to seek help in understanding those rights. Notice of the right of self-organization, to form, join, or assist labor organizations, to bargain collectively, to engage in other concerted activities, and to refrain from such activities, and of the Board's role in protecting those statutory rights is necessary to effectuate the provisions of the NLRA.

The Board believes that the workplace itself is the most appropriate place for communicating with employees about their basic statutory rights as employees. Cf. *Eastex, Inc.* v. *NLRB,* 437 U.S. 556, 574 (1978) (''[T]he plant is a particularly appropriate place for the distribution of [NLRA] material.'').

Accordingly, and pursuant to its rulemaking authority under Section 6 of the NLRA, the Board proposed a new rule requiring all employers subject to the NLRA to post a copy of a notice advising employees of their rights under the NLRA and providing information pertaining to the enforcement of those rights. 75 FR 80411. For the reasons discussed more fully below, the Board tentatively determined that the content of the notice should be the same as that of the notice required under the Department of Labor's notice posting rule, 29 CFR part 471. *Id.* at 80412. Also, as discussed at length below, the Board proposed that failure to post the notice would be found to be an unfair labor practice—*i.e.,* to interfere with, restrain, or coerce employees in the exercise of their NLRA rights, in violation of Section 8(a)(1) of the NLRA. *Id.* at 80414. The Board also proposed that failure to post the notice could lead to tolling of the 6-month statute of limitations for filing unfair labor practice charges, and that knowing and willful failure to post the notice could be considered as evidence of unlawful motive in unfair labor practice cases. *Id.* The Board explained that the burden of compliance would be minimal—the notices would be made available at no charge by the Board (both electronically and in hard copy), and employers would only be required to post the notices in places where they customarily post notices to employees; the rule would contain no reporting or recordkeeping requirements. *Id.* at 80412. Finally, the Board expressed its position that it was not required to prepare an initial regulatory flexibility analysis of the proposed rule under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* and that the notice posting requirement was not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq. Id.* at 80415–80416.

The Board invited comments on its legal authority to issue the rule, the content of the notice, the requirements for posting the notice, the proposed enforcement scheme, the definitions of terms in the proposed rule, and on its positions concerning the Regulatory Flexibility Act and the Paperwork Reduction Act. The Board stated that comments would be accepted for 60 days following the publication of the NPRM in the **Federal Register**, or until February 22, 2011. The Board received 6,560 comments by February 22. However, many late-filed comments were also submitted, and the Board decided to accept all comments that it received on or before March 23.[8]

In all, 7,034 comments were received from employers, employees, unions, employer organizations, worker assistance organizations, and other concerned organizations and individuals, including two members of Congress. The majority of comments, as well as Board Member Hayes' dissent, oppose the rule or aspects of it; many opposing comments contain suggestions for improvement in the event the Board issues a final rule. Many comments, however, support the rule; a few of those suggest changes to clarify or strengthen the rule. The Board wishes to express its appreciation to all those who took the time to submit thoughtful and helpful comments and suggestions concerning the proposed rule.[9]

After careful consideration of the comments received, the Board has decided to issue a final rule that is similar to that proposed in the NPRM, but with some changes suggested by commenters. The most significant change in the final rule is the deletion of the requirement that employers distribute the notice via email, voice mail, text messaging or related electronic communications if they customarily communicate with their employees in that manner. Other significant changes include clarifications of the employee notice detailing employee rights protected by the NLRA and unlawful conduct on the part of unions; clarification of the rule's requirements for posting notices in foreign languages; allowing employers to post notices in black and white as well as in color; and exemption of the U.S. Postal Service from coverage of the rule. The Board's responses to the comments, and the changes in the rule and in the wording of the required notice of employee rights occasioned by the comments, are explained below. (In his dissent, Board Member Hayes raises a number of points that are also made in some of the comments. The Board's responses to those comments should be understood as responding to the dissent as well.)[10]

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[6] *See, e.g.,* Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–10(a); Age Discrimination in Employment Act, 29 U.S.C. 627; Family and Medical Leave Act, 29 U.S.C. 2601, 2619(a); Fair Labor Standards Act, 29 CFR 516.4 (implementing 29 U.S.C. 211). 75 FR 80411.

[7] As set forth in the NPRM, two petitions were filed to address this anomaly. 75 FR 80411.

[8] March 23, 2011 was the date that the Board downloaded all of the electronic and (pdf. versions of) hard copy comments it had received from *http://www.regulations.gov* and subsequently uploaded into a text analytics tool for coding and review.

A few commenters submitted their comments in both electronic and hard copy form. Because all comments received are included in the numbers cited in text above, those numbers overstate somewhat the number of individuals, organizations, etc. that submitted comments.

[9] Many comments charge that the Board is issuing the rule for political reasons, to encourage and spread unionism, to discourage employers and employees from engaging in direct communication and problem solving, to drive up union membership in order to retain agency staff, and even to ''line [its] pockets.'' The Board responds that its reasons for issuing the rule are set forth in this preamble.

[10] The Board majority's reasoning stands on its own. By its silence, the majority does not adopt any characterization made by the dissent of the majority's rationale or motives.

II. Authority

Section 6 of the NLRA, 29 U.S.C. 156, provides that ''The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act [5 U.S.C. 553], such rules and regulations as may be necessary to carry out the provisions of this Act.'' As discussed in detail below, the Board interprets Section 6 as authorizing the rule.

A. The Board's Section 6 Rulemaking Authority

Numerous comments dispute the Board's statutory authority to enact the proposed rule. Many note the fact that the Board's rulemaking is constrained by Congressional intent as evidenced in its enabling statute. For instance, the American Trucking Association quotes a Ninth Circuit case explaining that Section 6 ''does not authorize the Board to promulgate rules and regulations which have the effect of enlarging its authority beyond the scope intended by Congress,''[11] and similarly, the Motor & Equipment Manufacturers Association asserts, ''A regulation cannot stand if it is contrary to the statute.''[12] The Board agrees that it may not exercise its rulemaking authority in a way contrary to that intended by Congress, but for the reasons discussed below it also does not believe that it has done so in this rule.

Several comments assert that because NLRA Section 6 is written in general, rather than specific, terms, the Board is not empowered to enact the proposed rule. For example, Associated Builders and Contractors argues that ''the lack of express statutory language under Section 6 of the NLRA to require the posting of a notice of any kind 'is a strong indicator, if not dispositive, that the Board lacks the authority to impose such a requirement * * *.' ''[13] And the Heritage Foundation likewise argues that the Board's reliance upon its general Section 6 rulemaking authority does not suffice to meet the Administrative Procedure Act's requirement that the NPRM must ''reference the legal authority under which the rule is proposed.''[14]

The Board believes that these comments are in error because the courts' construction of other statutes' general rulemaking authority, as well as Section 6 in particular, fully support its reading of this statutory provision. In fact, earlier this year, the Supreme Court issued a decision in *Mayo Foundation for Medical Education and Research* v. *United States*[15] (discussed more fully below), unanimously reaffirming the principle that a general grant of rulemaking authority fully suffices to confer legislative (or binding) rulemaking authority upon an agency.

Even prior to *Mayo,* a long line of both non-NLRA and NLRA cases supported reading Section 6 in the manner suggested by the Board. Over forty years ago, in *Thorpe* v. *Housing Authority,*[16] the Supreme Court found that the expansive grant of rulemaking authority in Section 8 of the Housing Act was sufficient to grant legislative rulemaking power to the Department of Housing and Urban Development. The Court further noted that ''[s]uch broad rule-making powers have been granted to numerous other federal administrative bodies in substantially the same language.''[17] A few years later, in *Mourning* v. *Family Publication Services,*[18] the Court reaffirmed its stance in *Thorpe:*

> Where the empowering provision of a statute states simply that the agency may 'make * * * such rules and regulations as may be necessary to carry out the provisions of this Act,' we have held that the validity of a regulation promulgated thereunder will be sustained so long as it is 'reasonably related to the purposes of the enabling legislation.'[19]

Following the Supreme Court's lead, key circuit decisions then extended the notion that broad grants of rulemaking authority conveyed legislative rulemaking power.[20] Although the Board had historically chosen to make policy by adjudications, the Supreme Court, consistent with the non-NLRA case law, used a pair of Board enforcement cases to unanimously emphasize the existence of the Board's legislative rulemaking authority, *NLRB* v. *Wyman-Gordon Co.*[21] and *NLRB* v. *Bell Aerospace.*[22]

In 1991, after the Board enacted a rule involving health care units, the Supreme Court unanimously upheld that rule in *American Hospital Association* v. *NLRB.*[23] The Supreme Court found that that the general grant of rulemaking authority contained in Section 6 of the Act ''was unquestionably sufficient to authorize the rule at issue in this case unless limited by some other provision in the Act.''[24] As in *AHA,* there is no such limitation here on the Board's authority to enact the proposed Rule, as explained further below. As Senator Tom Harkin and Representative George Miller[25] emphasized in their comment, the Supreme Court in *AHA* examined ''the structure and the policy of the NLRA,'' in order to conclude:

> As a matter of statutory drafting, if Congress had intended to curtail in a particular area the *broad rulemaking authority* granted in § 6, we would have expected it to do so in language expressly describing an exception from that section or at least referring specifically to the section.[26]

Thus, the Court could not have been clearer that unless the Board is ''expressly'' limited in some manner, Section 6 empowers the Board to make ''such rules and regulations as may be necessary to carry out the provisions of this Act.'' This point was underscored in a Wagner Act-era Senate hearing, as cited by Americans for Limited Government (ALG), in which it was acknowledged that the language of Section 6 indeed grants ''broad powers'' to the Board.[27]

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[11] *Gen. Eng'g, Inc.* v. *NLRB,* 341 F.2d 367, 374 (1965).

[12] Citing *United States* v. *O'Hagan,* 521 U.S. 642, 673 (1997). However, the Supreme Court actually held there that an agency's interpretation of its enabling statute must be given ''controlling weight unless it is arbitrary, capricious, or manifestly contrary to the statute.'' (quoting *Chevron U.S.A. Inc.* v. *Natural Res. Def. Council, Inc.,* 467 U.S. 837, 844 (1984)). There, the Court upheld the rule and found it was not arbitrary, capricious, or manifestly contrary to the statute.

[13] Quoting Member Hayes' dissent, 75 FR 80415.

[14] *See* 5 USC 553(b)(2). For this conclusion, the Heritage Foundation cites *Global Van Lines, Inc.,* v. *ICC,* 714 F.2d 1290, 1297–98 (5th Cir. 1983). But *Global Van Lines* did not find that a general statement of authority can never meet the APA's requirements to specify the legal authority for the rule. Instead, the Fifth Circuit held that that portion of the APA is violated when an agency chooses to rely on additional statutory provisions in support of its rule for the first time on appeal, and those grounds do not appear elsewhere in the administrative record. *See id.* at 1298–99. Here, in contrast, the grounds for the Board's rule are clearly laid out in subsection B, Statutory Authority, below.

[15] 131 S.Ct. 704, 713–14 (2011).

[16] 393 U.S. 268 (1969).

[17] *Id.* at 277 n. 28 (citations omitted). The rulemaking grant there at issue provided that HUD may, ''from time to time * * * make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act,'' *id.* at 277, quite similar to Section 6 of the NLRA.

[18] 411 U.S. 356 (1973).

[19] *Id.* at 369 (quoting *Thorpe,* 393 U.S. at 280–81).

[20] *Nat'l Ass'n. of Pharm. Mfrs.* v. *FTC,* 637 F.2d 877, 880 (2d Cir. 1981) (''this generous construction of agency rulemaking authority has become firmly entrenched''); *Nat'l Petroleum Refiners Ass'n* v. *FTC,* 482 F.2d 672, 686 (D.C. Cir. 1973) (''plain, expansive language'' of the rulemaking grant at issue, together with the ''broad, undisputed policies'' meant to be furthered by Congress's enactment of the Federal Trade Commission Act of 1914, sufficed to grant the FTC substantive rulemaking authority).

[21] 394 U.S. 759, 764 (1969) (plurality opinion of Fortas, J., joined by Warren, C.J., Stewart, J., and White, J.), 770 (Black, J., Marshall, J., and Brennan, J), 777, 779 (Douglas, J.), 783 n. 2 (Harlan, J.).

[22] 416 U.S. 267, 295 (1974) (majority opinion of Powell, J., and dissenting opinion of White, J. (and three other justices)).

[23] 499 U.S. 606 (1991) (*AHA*).

[24] *Id.* at 609–10 (emphasis added).

[25] (Hereafter, Harkin and Miller.) Senator Harkin is the Chairman of the Senate Committee on Health, Education, Labor, and Pensions. Representative Miller is Ranking Member on the House Committee on Education and the Workforce.

[26] *Id.* at 613 (emphasis added).

And in January of this year, a unanimous Supreme Court, in *Mayo Foundation for Medical Education and Research* v. *United States,* affirmed this key principle that a broad grant of statutory rulemaking authority conveys authority to adopt legislative rules.[28] *Mayo* concerned in part the question of how much deference a Treasury Department tax regulation should receive. In *Mayo,* an amicus argued that the Treasury Department's interpretation should receive less deference because it was issued under a general grant of rulemaking authority, as opposed to an interpretation issued under a specific grant of authority.[29] The Court responded by first explaining its earlier holding in *U.S.* v. *Mead,* that *Chevron* deference is appropriate ''when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority.'' [30] Then, in significant part, the Court observed:

> *Our inquiry in that regard does not turn on whether Congress's delegation of authority was general or specific.*
>
> * * * * *
>
> The Department issued the full-time employee rule *pursuant to the explicit authorization to ''prescribe all needful rules and regulations for the enforcement''* of the Internal Revenue Code. 26 U.S.C. 7805(a). We have found *such ''express congressional authorizations to engage in the process of rulemaking''* to be ''a very good indicator of delegation meriting Chevron treatment.'' [31]

And so, all nine members of the Supreme Court agreed on the following key principle: an express, albeit general, grant of rulemaking authority is fully sufficient for an agency to receive *Chevron* deference for its rulemaking. It follows that a broad grant of rulemaking authority will suffice for the agency to engage in legislative rulemaking in the first place. Thus, the Supreme Court's rulings continue to fully support a broad construction of Section 6.

Disputing this conclusion, ALG asserts that Section 6 was intended to be used ''primarily'' for procedural rulemaking, and cites a Senate report from the Wagner Act's legislative history. That Senate report explains: ''[i]n no case do the rules have the force of law in the sense that criminal penalties or fines accrue for their violation, and it seems sufficient that the rules prescribed must be 'necessary to carry out the provisions' of the act.'' [32] The Board disagrees. The cited language merely proclaims the obvious, that no criminal penalties or fines accrue for violating the Board's rules. However, laws such as the NLRA that do not impose criminal penalties or fines for their violation can also have the ''force of law'' (which is perhaps why the Senate report used the limiting phrase ''in the sense of''). The Supreme Court has previously recognized that final Agency orders under Sections 10 (e) and (f) of the Act, despite their non-self enforcing nature, have ''the force and effect of law.'' [33] So too, do the Board's rules have the force and effect of law, as held by the Supreme Court in *AHA.*[34]

Several comments discuss whether Board Rule 103.20, which mandates the posting of an election notice in a workplace three working days prior to a representation election, should be considered analogous to the proposed rule. The United Food and Commercial Workers International Union (UFCW) comments that the election rule is, like the proposed rule, only minimally burdensome and further noted that it has never been challenged.[35] ALG disagrees that the election rule should be considered analogous here, because although in the election context a notice posting is the most feasible means to inform employees about an upcoming election that is occurring at a specific place and time, that is not the case in the NLRA rights context, in which employees can just search the Internet to find out more information. The Board agrees with the UFCW that posting a notice is a minimally burdensome way to ensure that employees receive certain information, although obviously, the proposed notice will reach many more employers over a much longer period of time than do election notices. And ALG's acknowledgment that a notice posting in the workplace is in fact sometimes the most feasible means to inform employees of important information supports the Board's belief, explained below, that workplace notice posting is a more efficient way of informing employees of their NLRA rights than relying on information available on the Internet.

A few comments argue that the Board is a law enforcement agency only, and should not be engaging in rulemaking for that reason. One comment asserts that ''Congress did not intend to ''empower the NLRB to be a rulemaking body, but rather an investigatory/enforcement agent of the NLRA.'' [36] The Board responds that by enacting Section 6, Congress plainly and explicitly intended to, and did, ''empower the NLRB to be a rulemaking body.'' And, as shown above, *AHA* conclusively found that the Board is empowered to use its rulemaking powers, as the Court had previously indicated in *Wyman-Gordon* and *Bell Aerospace.*[37]

A joint comment submitted by Douglas Holtz-Eakin and Sam Batkins argues against the Board's assertion of Section 6 authority here by asserting that ''the Supreme Court has circumscribed NLRB rulemaking in the past: 'The deference owed to an expert tribunal cannot be allowed to slip into a judicial inertia which results in the unauthorized assumption by an agency of major policy decisions properly made by Congress.' '' However, that comment neglects to provide the citation for that quotation, *American Ship Building Co.* v. *NLRB,*[38] which was not a rulemaking case but an adjudication. In any event, the Board does not agree that this rule presumes to make a major policy decision properly made by Congress alone. As explained in subsection B,

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[27] Statement of Donald A. Callahan, U.S. Senate Committee on Education and Labor, March 29, 1935, *Legislative History of the National Labor Relations Act,* U.S. Government Printing Office, 1949, p. 2002.

[28] 131 S. Ct. 704, 713–14 (2011).

[29] *Id.* at 713.

[30] *Id.* (quoting *United States* v. *Mead,* 533 U.S. 218, 226–27 (2001)); *see also Chevron,* 467 U.S. at 842–43 (announcing two-part framework for determining whether courts should grant deference to agency interpretations of enabling statutes).

[31] *Mayo,* 131 S. Ct. at 713–14 (emphasis added and citations omitted).

[32] *See* Comparison of S. 2926 (73d Congress) and S. 1958 (74th Congress) 24 (Comm. Print 1935), reprinted in 1 Legislative History of the National Labor Relations Act, 1935, (1949) at 1349.

[33] *NLRB* v. *Sears, Roebuck & Co.,* 421 U.S. 132, 153–54 (1975) (ordering disclosure of such Agency opinions under the FOIA, and quoting legislative history of the FOIA to that effect, H.R. Rep. No. 1497, p. 7, U.S. Code Cong. & Admin. News, 1966, p. 2424).

[34] 499 U.S. at 609–10. But even if one were to construe the report in the way advocated by the comment, such reports themselves do not have the force and effect of law, *see Lincoln* v. *Vigil,* 508 U.S. 182, 192 (1993); *AHA,* 499 U.S. at 616, and thus at best are only potential evidence of legislative intent.

[35] However, it is incorrect that the rule has never been challenged; it has been challenged and upheld. *See Pannier Corp.* v. *NLRB,* 120 F.3d 603, 606–07 (6th Cir. 1997) (rejecting an as-applied challenge to Rule 103.20).

[36] Comment of Manufacturers' Association of South Central Pennsylvania.

[37] In *National Petroleum Refiners Ass'n* v. *FTC,* 482 F.2d 672 (D.C. Cir. 1973), the court rejected the argument that the FTC's prosecutorial functions rendered it unsuitable for issuing rules. By way of example, it noted that the NLRB is similar to the FTC in its methods of adjudication and enforcement, but the Supreme Court had repeatedly encouraged the Board to utilize its rulemaking powers. *Id.* at 684.

[38] 380 U.S. 300, 318 (1965).

Statutory Authority, below, the Board believes that it has been Congressionally authorized to make this regulatory decision in the interests of carrying out the provisions of the Act.

Many comments argue that the Board should heed the use of the word ''necessary'' in Section 6. For instance, the Portland Cement Association comments that Section 6 requires the Board to demonstrate that: (1) The specific rule being proposed is, in fact, necessary, and (2) the adoption of the proposed rule will carry out one or more specific provisions of the Act.[39] The Board believes, for the reasons expressed in subsection C, Factual Support, below, that the requisite showing of necessity has been made. And, as explained below, the adoption of the proposed rule is consistent with Section 1 and will help effectuate Sections 7, 8, 9 and 10 of the NLRA.

The Board, however, disagrees with the Motor & Equipment Manufacturers Association's assertion based upon the case of *West Virginia State Board of Education* v. *Barnette*[40] that the Board needs to show ''a grave and immediate danger'' before enacting a rule. First, that case held that that very rigorous standard of review is required only where a First Amendment freedom is alleged to have been infringed. The Court further noted that where the First Amendment is not implicated, the government may regulate an area so long as it has a ''rational basis'' for doing so. As explained in subsection B, Statutory Authority, below, this rule infringes upon no First Amendment interests, and consequently, the rule should be judged on a standard similar to the ''rational basis'' test laid out in *Barnette*. It was in fact just such a deferential standard which the Supreme Court used to examine the Board's health care rule in *AHA*. There, the Court found that even if it read Section 9 to find any ambiguity, it still would have deferred to the Board's ''reasonable interpretation of the statutory text,'' and found the Board authorized under Sections 6 and 9 to enact the health care bargaining unit rule at issue.[41] No ''grave and immediate danger'' was found to be required prior to the Board enacting that rule. This ruling was also consistent with the Supreme Court's earlier holdings in *Thorpe* and *Mourning,* in which regulations promulgated under broadly phrased grants of authority needed to be only ''reasonably related to the purposes of the enabling legislation.''[42] For the reasons shown below, that standard is more than met in the present rule.

B. The Board's Statutory Authority To Issue This Rule

The National Labor Relations Act does not directly address an employer's obligation to post a notice of its employees' rights arising under the Act or the consequences an employer may face for failing to do so. However, as stated, NLRA Section 6 empowers the Board to promulgate legislative rules ''as may be necessary to carry out the provisions'' of the Act. 29 U.S.C. 156. A determination of necessity under Section 6 made by the Board, as administrator of the NLRA, is entitled to deference. *See Ragsdale* v. *Wolverine World Wide, Inc.,* 535 U.S. 81, 86 (2002).

Furthermore, even in the absence of express rulemaking authority, ''the power of an administrative agency to administer a congressionally created * * * program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress.'' *Morton* v. *Ruiz,* 415 U.S. 199, 231 (1974). Under the well-known test articulated by the Supreme Court in *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984), courts will defer to the Board's reasonable interpretation of a gap left by Congress in the NLRA.

An examination of the provisions of the whole law demonstrate how the notice-posting rule is a legitimate exercise of both legislative rulemaking authority under Section 6 and implied gap-filling authority under *Chevron,* 467 U.S. at 843. Section 1 of the NLRA explains that Congress deliberately chose the means of ''encouraging the practice and procedure of collective bargaining'' and ''protecting the exercise of workers of full freedom of association, self-organization, and designation of representatives of their own choosing'' in order to combat the substantial burdens on commerce caused by certain employer and labor union practices as well as by the inherent ''inequality of bargaining power between employees * * * and employers.'' 29 U.S.C. 151.[43] Section 7 therefore sets forth the core rights of employees ''to self-organization''; ''to form, join, or assist labor organizations''; ''to bargain collectively''; and ''to engage in other concerted activities''; as well as the right ''to refrain from any or all such activities.'' *Id.* § 157. Section 8 defines and prohibits union and employer ''unfair labor practices'' that infringe on employees' Section 7 rights, *id.* § 158, and Section 10 authorizes the Board to adjudicate unfair labor practice claims, *id.* § 160, subject to the NLRA's procedural six-month statute of limitations, *see Zipes* v. *Trans World Airlines, Inc.,* 455 U.S. 385, 395 n.11 (1982). Finally, Section 9 authorizes the Board to conduct representation elections and issue certifications. 29 U.S.C. 159.

Notably, the NLRA does not give the Board or its General Counsel roving investigatory powers. Although the Board is specifically empowered to ''prevent'' unfair labor practices, *id.* § 160(a), ''[t]he Board may not act until an unfair labor practice charge is filed * * * alleging a violation of the Act.'' 2 The Developing Labor Law 2683 (John E. Higgins, Jr. ed., 5th ed. 2006). In addition, certification ''procedures are set in motion with the filing of a representation petition.'' *Id.* at 2662. In both instances, the initiating document is filed by a private party. *Id.* at 2683 (citing 29 CFR 102.9); *id.* at 2662–63 (citing 29 U.S.C. 159(c)(1)(A), (B), and (e)(1)).

Enforcement of the NLRA and effectuation of Congress's national labor policy therefore depend on the existence of outside actors who are not only aware of their rights but also know where they may seek to vindicate them within appropriate timeframes. The Department of Labor made a similar finding in an analogous rulemaking proceeding under the Fair Labor Standards Act: ''effective enforcement of the [FLSA] depends to a great extent upon knowledge on the part of covered employees of the provisions of the act and the applicability of such provisions to them, and a greater degree of compliance with the act has been effected in situations where employees are aware of their rights under the law.'' 14 FR 7516, 7516 (Dec. 16, 1949). Given the direct relationship between employees' timely awareness of their rights under the NLRA and the Board's ability to protect and enforce those rights, this rule is ''necessary'' for purposes of Section 6.

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[39] *See also* comment of Americans for Limited Government, citing to *AFL–CIO* v. *Chao,* 409 F.3d 377, 391 (D.C. Cir. 2005) for the same principle.

[40] 319 U.S. 624, 639 (1943).

[41] 499 U.S. at 614.

[42] *Mourning,* 411 U.S. at 369 (quoting *Thorpe,* 393 U.S. at 280–81).

[43] These regulations are entirely compatible with the national labor policy, as expressed in Section 1, ''to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred.'' 29 U.S.C. 151 (fifth paragraph). As explained below, the Board's ability to ''eliminate'' the causes of labor strife and depressed wage rates, ''which have the intent or necessary effect of burdening or obstructing commerce,'' *id.,* depends on workers' knowledge of their rights and the protections provided by the NLRB. The Board therefore rejects the argument of the Manufacturer's Association of South Central Pennsylvania that both the notice-posting rule and the Board's general assertion of rulemaking authority are inconsistent with Section 1.

Aside from the rule's manifest necessity, the notice posting requirement fills a *Chevron*-type gap in the NLRA's statutory scheme. Thus, as discussed, the purpose of Section 1, as implemented in Sections 7 and 8, is to encourage the free exercise and enforcement of the Act's provisions, and fulfillment of that purpose depends on the private initiative of employees and employers to commence Board representation proceedings pursuant to Section 9 and Board unfair labor practice proceedings pursuant to Section 10. The effective working of the NLRA's administrative machinery therefore presupposes that workers and their employers have knowledge of the rights afforded by the statute and the means for their timely enforcement. The statute, however, has no provision with respect to making that knowledge available, a subject about which the statute is completely silent.

This statutory gap has always been present but was of less significance in earlier years when the density of union organization was greater, since, as is widely recognized, unions have been a traditional source of information about the NLRA's provisions. *See Lechmere, Inc.* v. *NLRB,* 502 U.S. 527, 531–32 (1992) (reaffirming that the Section 7 rights of employees interested in union organization depend to some extent on their having access to unions); *Harlan Fuel Co.,* 8 N.L.R.B. 25, 32 (1938) (holding that the rights guaranteed to employees by Section 7 include ''full freedom to receive aid, advice and information from others concerning [their self-organization] rights''); cf. *Chamber of Commerce of the United States* v. *Brown,* 554 U.S. 60, 68 (2008) (observing that Section 7 ''implies an underlying right to receive information''). Moreover, as rates of unionization have declined, employees are less likely to have experience with collective bargaining or to be in contact with other employees who have had such experience. The statutory gap is thus now important to the Board's administration of the NLRA and its role in enforcing employees' rights.

As the Supreme Court has observed,

> The responsibility to adapt the Act to changing patterns of industrial life is entrusted to the Board. * * * It is the province of the Board, not the courts, to determine whether or not the ''need'' [for a Board rule] exists in light of changing industrial practices and the Board's cumulative experience in dealing with labor-management relations. For the Board has the ''special function of applying the general provisions of the Act to the complexities of industrial life,'' and its special competence in this field is the justification for the deference accorded its determination.

NLRB v. *J. Weingarten, Inc.,* 420 U.S. 251, 266 (1975) (citations omitted). Consistent with this understanding of the Board's role, the notice-posting regulations represent an attempt to ''adapt the Act'' in light of recent realities and ''the Board's cumulative experience.'' *Id.* The rule is wholly consistent with the aims of the NLRA, and the ''need'' for it now is heightened given the ''changing patterns of industrial life.'' *Id.*

For all these reasons, this rule is entitled to deference regardless of how it is characterized because it is ''reasonably related to the purposes of the enabling legislation,'' *Thorpe,* 393 U.S. at 280–81, and constitutes a '' 'reasonable interpretation' of the enacted text,'' *Mayo,* 131 S. Ct. at 714 (quoting *Chevron,* 467 U.S. at 844).

In response to the NPRM, a number of arguments have been made challenging the Board's statutory authority to promulgate the notice posting rule. As explained below, the Board does not find merit in any of these arguments.

1. Limitations on the Board's Rulemaking Authority Implied by Sections 9 and 10 of the Act

Of the comments that address the Board's statutory authority to issue this rule, many express agreement with the dissenting views of Member Hayes that were published in the NPRM. Member Hayes criticized the basis for the rule and questioned the Board's statutory authority to promulgate and enforce it. *See* 75 FR 80415. He specifically referred to Section 10 as an obstacle to the proposed rule, because it ''indicate[d] to [him] that the Board clearly lacks the authority to order affirmative notice-posting action in the absence of an unfair labor practice charge filed by an outside party.'' *Id.*

Many comments submitted in response to the NPRM, such as those of the Texas Association for Home Care & Hospice and those of the Independent Bakers Association, interpret Section 10 to prohibit the Board from ordering any affirmative act that does not address the consequences of an unfair labor practice. Although this proposition may be true when the Board acts through adjudication—the administrative function to which Section 10 directly applies—it does not perforce apply when the Board specifies affirmative requirements via rulemaking under Section 6. *See Clifton* v. *FEC,* 114 F.3d 1309, 1312 (1st Cir. 1997) (''Agencies are often allowed through rulemaking to regulate beyond the express substantive directives of the statute, so long as the statute is not contradicted.'') (citing *Mourning*). If it did, then the Board's longstanding rule mandating that employers post an election notice three days before a representation election would be subject to challenge on that ground. *See* 29 CFR 103.20; *see also Pannier Corp., Graphics Div.* v. *NLRB,* 120 F.3d 603, 606–07 (6th Cir. 1997) (rejecting an as-applied challenge to § 103.20). Furthermore, under *American Hospital Association,* the Board's exercise of its broad rulemaking authority under Section 6 is presumed to be authorized unless elsewhere in the Act there is ''language expressly describing an exception from that section or at least referring specifically to the section.'' 499 U.S. at 613. Section 10 does not refer to the Board's Section 6 authority.

Some comments, such as those of the Council on Labor Law Equality (COLLE), contend that the Board has no authority whatsoever to administer the NLRA unless a representation petition or unfair labor practice charge has been filed under Sections 9 or 10, respectively. The Board declines to adopt such a narrow view of its own authority. Certainly, the Board cannot issue certifications or unfair labor practice orders via rulemaking proceedings. But that is not what this rule does. As explained above, by promulgating the notice-posting rule, the Board is taking a modest step that is ''necessary to carry out the provisions'' of the Act, 29 U.S.C. 156, and that also fills a statutory gap left by Congress in the NLRA.

Moreover, the argument advanced by COLLE and others fails to appreciate that the Board's authority to administer the Act is not strictly limited to those means specifically set forth in the NLRA. Rather, as the Supreme Court has recognized, the NLRA impliedly authorizes the Board to take appropriate measures ''to prevent frustration of the purposes of the Act.'' *NLRB* v. *Nash-Finch Co.,* 404 U.S. 138, 142 (1971). By way of example, the Supreme Court pointed out that its decisions had recognized the Board's implied authority to petition for writs of prohibition against premature invocation of the review jurisdiction of the courts of appeals, *see In re NLRB,* 304 U.S. 486, 496 (1938); to institute contempt proceedings for violation of enforced Board orders, *see Amalgamated Util. Workers* v. *Con. Edison Co.,* 309 U.S. 261 (1940); and to file claims in bankruptcy for Board-awarded backpay, *see Nathanson* v. *NLRB,* 344 U.S. 25 (1952). Relying on that precedent in *Nash-Finch Co.,* the Supreme Court concluded that the Board also had implied authority ''to enjoin state action where [the Board's] federal power preempts the field.'' 404 U.S. at 144. Like these judicially recognized powers, the notice-posting requirement that is the subject of this rulemaking has not been specifically provided for by Congress. But the cited cases demonstrate that Congress need not expressly list a power for the Board to legitimately exercise it. Indeed, the notice-posting requirement is not even an implied power of the Board in the same sense as those previously mentioned. Rather, it is the product of the Board's exercise of express rulemaking authority and inherent gap-filling authority, both of which have been delegated to the Board by Congress.

2. The First Amendment and Section 8(c) of the NLRA

A handful of commenters argue that the notice-posting requirement violates the First Amendment to the Constitution, Section 8(c) of the NLRA, or both. For example, the Center on National Labor Policy, Inc. maintains that ''compelling an employer to post its property with a Notice that asserts the statutory 'rights' and employer obligations, runs counter to constitutional views long protected by the Supreme Court.'' The Center also argues that the ''proposed poster would impede the employer's statutory right to express itself on its own property.'' Along these same lines, the National Right to Work Legal Defense Foundation, Inc. and others on whose behalf it writes contend that ''the Board's proposal for forced speech favoring unionization directly conflicts with the First Amendment and longstanding federal labor policy under Section 8(c) that employers and unions should be able to choose themselves what to say about unionization.'' These concerns were echoed by the National Association of Wholesaler-Distributors. In addition, two attorneys affiliated with Pilchak Cohen & Tice, P.C., which they describe as ''a management-side labor and employment law firm,'' argue that the notice-posting requirement ''tramples upon employers' Free Speech rights by regulating the content of information that employers are required to tell employees and by compelling them to post the Notice containing pro-union NLRA rights, when it is almost assuredly not the employers' prerogative to do so.'' The Independent Association of Bakers goes further and characterizes the regulation as an unconstitutional ''gag order'' that ''prohibits the employer from telling the truth about the impact a union might pose to his business.'' The Board rejects these arguments.

As an initial matter, requiring a notice of employee rights to be posted does not violate the First Amendment, which protects the freedom of speech. Indeed, this rule does not involve employer speech at all. The government, not the employer, will produce and supply posters informing employees of their legal rights. The government has sole responsibility for the content of those posters, and the poster explicitly states that it is an ''official Government Notice''; nothing in the poster is attributed to the employer. In fact, an employer has no obligation beyond putting up this government poster. These same considerations were present in *Lake Butler Apparel Co.* v. *Secretary of Labor,* 519 F.2d 84, 89 (5th Cir. 1975), where the Fifth Circuit rejected as ''nonsensical'' an employer's First Amendment challenge to the Occupational Safety and Health Act requirement that it post an ''information sign'' similar to the one at issue here. As in *Lake Butler,* an employer subject to the Board's rule retains the right to ''differ with the wisdom of * * * this requirement even to the point * * * of challenging its validity. * * * But the First Amendment which gives him the full right to contest validity to the bitter end cannot justify his refusal to post a notice * * * thought to be essential.'' *Id.; see also Stockwell Mfg. Co.* v. *Usery,* 536 F.2d 1306, 1309–10 (10th Cir. 1976) (dicta) (rejecting a constitutional challenge to a requirement that an employer post a copy of an OSHA citation).

But even if the Board's notice-posting requirement is construed to compel employer speech, the Supreme Court has recognized that governments have ''substantial leeway in determining appropriate information disclosure requirements for business corporations.'' *Pac. Gas & Elec. Co.* v. *Pub. Utils. Comm'n,* 475 U.S. 1, 15 n.12 (1985). This discretion is particularly wide when the government requires information disclosures relevant to the employment relationship. Thus, as the D.C. Circuit has observed, ''an employer's right to silence is sharply constrained in the labor context, and leaves it subject to a variety of burdens to post notices of rights and risks.'' *UAW-Labor Employment & Training Corp.* v. *Chao,* 325 F.3d 360, 365 (D.C. Cir. 2003) (*UAW* v. *Chao*) (citing *Lake Butler,* 519 F.2d at 89). Accordingly, the Board's notice-posting requirement is not susceptible to a First Amendment challenge.[44]

The Board is equally satisfied that the rule does not violate NLRA Section 8(c), 29 U.S.C. 158(c), which creates a safe harbor for noncoercive speech in the unfair labor practice area. Specifically, Section 8(c) shields from unfair labor practice liability ''[t]he expressing of *any views, argument or opinion,''* provided that ''such expression contains no threat of reprisal or force or promise of benefit.'' *Id.* (emphasis added). A government poster containing accurate, factual information about employees' legal rights ''merely states what the law requires.'' *Lake Butler,* 519 F.2d at 89. For that reason, ''[t]he posting of the notice does not by any stretch of the imagination reflect one way or the other on the views of the employer.'' *Id.*[45]

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[44] The decision of the intermediate state court in *Smith* v. *Fair Employment & Housing Commission,* 30 Cal. Rptr. 2d 395 (Cal. Ct. App. 1994), rev'd on other grounds, 913 P.2d 909 (Cal. 1996), lends no support to arguments challenging these regulations on First Amendment grounds. There, the California Court of Appeal held that a landlord's right to freedom of speech was ''implicate[d],'' *id.* at 401–02, by a state fair housing agency's remedial order requiring her to sign, post, and distribute notices ''setting out the provisions of [the fair housing statute], the outcome of th[e] case, and the statement that [she] practices equal housing opportunity.'' 913 P.2d at 914. The *Smith* case is not persuasive here because the notice at issue in *Smith* would not merely have set forth the rights of prospective buyers or renters but also would have contained a signed statement from the landlord which would have given the false appearance that she agreed with the state's fair housing ''concepts and rules,'' despite her religious beliefs to the contrary. 30 Cal. Rptr. 2d at 401. That feature of the case has no parallel here. Here, by contrast, employers are not required to sign the informational notice, and as noted, nothing in the poster is attributed to them. The Board further notes that the *Smith* decision is not authoritative because it was superseded by the California Supreme Court's grant of review in that case. *See* 913 P.2d at 916 n.*.

[45] The Employers Association of New Jersey is therefore off the mark when it argues that the notice-posting requirement is preempted under the principles of *Lodge 76, International Ass'n of Machinists & Aerospace Workers* v. *Wisconsin Employment Relations Commission,* 427 U.S. 132 (1976), as an attempt to regulate employer speech ''about unionization and collective bargaining.'' As explained above, the employer's choice whether to express its own views, arguments, or opinions is wholly unaffected by a requirement to post a government-provided notice summarizing what the law requires. Indeed, consistent with both *Machinists* and the policy of Section 8(c) '''to encourage free debate on issues dividing labor and management,''' *Brown,* 554 U.S. at 67 (quoting *Linn* v. *United Plant Guard Workers, Local 114,* 383 U.S. 53, 62 (1966)), employers remain free under this rule—as they have in the past—to express noncoercive views regarding the exercise of these rights as well as others. *See, e.g., United Techs. Corp.,* 274 N.L.R.B. 609, 609, 618–20, 624–26 (1985), enforced sub nom. *NLRB* v. *Pratt & Whitney Air Craft Div.*v., *United Techs. Corp.,* 789 F.2d 121 (2d Cir. 1986); *Warrensburg Bd. & Paper Corp.,* 143 N.L.R.B. 398, 398–99 (1963), enforced, 340 F.2d 920 (2d Cir. 1965). For this reason, the Board finds it unnecessary to adopt the proposal made by the

But even if the new rule is understood to compel employer speech, Section 8(c) '''merely implements the First Amendment.''' *Brown,* 554 U.S. at 67 (quoting *NLRB* v. *Gissel Packing Co.,* 395 U.S. 575, 617 (1969)). Thus, if a First Amendment challenge to the rule must fail, so too must a challenge based on Section 8(c). Such was the holding of the D.C. Circuit in *UAW* v. *Chao.* There, the court was presented with a preemption argument, grounded in Section 8(c), challenging a Federal procurement regulation that required contractors to post a notice informing their employees of certain NLRA rights. The D.C. Circuit interpreted Section 8(c) as coextensive with the scope of free speech rights protected by the First Amendment and upheld the procurement regulation in light of well-established free speech jurisprudence in the labor context. *See* 325 F.3d at 365.

3. Lack of Contemporaneity With the Enactment of the NLRA

Several comments attack the notice-posting regulation for its lack of contemporaneity with the enactment of the NLRA. For example, many comments criticize the regulation by noting that ''this is a new rule interpreted into the Act 75 years after its passage.'' The Board rejects these contentions for two reasons.

First, the Supreme Court has repeatedly ''instructed that 'neither antiquity nor contemporaneity with [a] statute is a condition of [a regulation's] validity.''' *Mayo,* 131 S. Ct. at 712 (alterations in original) (quoting *Smiley* v. *Citibank (S.D.), N.A.,* 517 U.S. 735, 740 (1996)); *see also Smiley,* 517 U.S. at 740 (deferring to a regulation ''issued more than 100 years after the enactment'' of the statutory provision that the regulation construed). Second, the argument fails to consider that much has changed since 1935, the year the NLRA was enacted. Unionization rates are one example. As pointed out in the NPRM and as confirmed by comments submitted by the Association of Corporate Counsel's Employment and Labor Law Committee, unionization rates increased during the early years of the Act, peaking at around 35 percent of the workforce in the mid-1950s. But since then, the share of the workforce represented by labor unions has plummeted to approximately 8 percent. As a result, fewer employees today have direct, everyday access to an important source of information regarding NLRA rights and the Board's ability to enforce those rights.

As noted above, ''[t]he responsibility to adapt the Act to changing patterns of industrial life is entrusted to the Board.'' *J. Weingarten, Inc.,* 420 U.S. at 266. It would therefore be an abdication of that responsibility for the Board to decline to adopt this rule simply because of its recent vintage. Accordingly, the Board finds such arguments unpersuasive.

4. Comparison With Other Statutes That Contain Notice-Posting Requirements

Many comments note, as the Board did in the NPRM, that several other labor and employment statutes enacted by Congress contain express notice-posting provisions. *See* 75 FR 80411 (listing such statutes). Though a few such comments, such as those of the International Brotherhood of Teamsters, applaud the Board for ''fill[ing] this glaring and indefensible gap,'' the bulk of these comments instead argue that the lack of a parallel statutory provision in the NLRA negates the existence of Board authority to issue this rule.

The Board notes that inferences gleaned from side-by-side comparisons to other statutes have diminished force when an agency uses its gap-filling authority under *Chevron.* There are many possible reasons why Congress did not include an express notice-posting provision in the NLRA. ''Perhaps that body consciously desired the [agency] to strike the balance at this level * * *; perhaps it simply did not consider the question at this level; and perhaps Congress was unable to forge a coalition on either side of the question * * *.'' *Chevron,* 467 U.S. at 865. But, ''[f]or judicial purposes, it matters not which of these things occurred.'' *Id.* Indeed, the central premise behind *Chevron* and its progeny is that agencies should be allowed reasonable latitude to fill gaps arising from congressional silence or ambiguity. Accordingly, ''the contrast between Congress's mandate in one context with its silence in another suggests not a prohibition but simply a decision not to mandate any solution in the second context, *i.e.,* to leave the question to agency discretion.'' *Cheney R.R. Co.* v. *ICC,* 902 F.2d 66, 69 (D.C. Cir. 1990) (labeling the *expressio unius est exclusio alterius* canon ''an especially feeble helper'' in *Chevron* cases).

Arguments contrasting the NLRA with other federal enactments that contain notice-posting requirements might have some persuasive force if there were evidence that Congress had considered and rejected inserting such a requirement into the Act. However, nothing in the legislative history of the Act so indicates. Indeed, there is not the slightest hint that the omission of a notice-posting requirement was the product of legislative compromise and therefore implies congressional rejection of the idea. *Cf. Ind. Prot. & Advocacy Servs.* v. *Ind. Family & Soc. Servs. Admin.,* 603 F.3d 365, 384–85 (7th Cir. 2010) (en banc) (Posner, J., concurring) (inferring a private right of action from statutory silence in a case where such silence was not the product of ''legislative compromise''). For these reasons, the Board rejects the Motor and Equipment Manufacturers Association's unsupported suggestion that there has been an affirmative ''legislative determination not to include a posting requirement by employers that have not violated the Act.''

A number of comments point out that Congress included a general notice-posting provision in the Railway Labor Act (RLA), which predates the NLRA. Given the relative proximity of these two enactments, some comments regard the absence of a notice-posting provision in the NLRA as strong evidence that Congress did not intend for there to be one. For reasons just explained, the Board does not find a side-by-side comparison with the RLA availing. In addition, the Board notes that although the NLRA and the RLA share several common features, the NLRA was not perfectly modeled after the RLA. *See Bhd. of R.R. Trainmen* v. *Chi. River & Ind. R.R. Co.,* 353 U.S. 30, 31 n.2 (1957) (''The relationship of labor and management in the railroad industry has developed on a pattern different from other industries. The fundamental premises and principles of the Railway Labor Act are not the same as those which form the basis of the National Labor Relations Act * * *.'').

Finally, the Board notes that other federal departments and agencies have not understood Congress's failure to include an express provision containing a notice-posting requirement in a federal labor or employment statute as a bar to such a regulatory requirement. Like the NLRA, the Fair Labor Standards Act (FLSA), which was passed in 1938, does not contain a provision requiring employers to post a notice of pertinent employee rights. Yet the Department of Labor adopted a notice requirement now codified at 29 CFR 516.4. Furthermore, the Board is unaware of any challenge to the Labor Department's authority to promulgate or enforce the FLSA notice requirement, which has been in effect for over 60 years. *See* 14 FR 7516 (Dec.

Pilchak attorneys to revise the rule to specify that employers ''may post a notice of equal dignity which advises employees of * * * additional rights and realities.'' Alternatively, the Pilchak attorneys propose that the Board amend the rule to permit employers to ''alter the Poster and include additional rights.'' Adopting this suggestion would compromise the integrity of the notice as a communication from the government. It, too, is therefore rejected.

16, 1949), promulgating 29 CFR 516.18, the predecessor to 29 CFR 516.4.

5. The Teamsters 357 Decision

In response to the NPRM, the U.S. Chamber of Commerce submitted a comment that questions ''how the proposal can be said to be consistent with'' the Supreme Court's decision in *Local 357, International Brotherhood of Teamsters* v. *NLRB,* 365 U.S. 667 (1961). Specifically, the Chamber accuses the Board of ignoring the Court's admonition in that case warning that ''[w]here * * * Congress has aimed its sanctions only at specific discriminatory practices, the Board cannot go farther and establish a broader, more pervasive regulatory scheme.'' *Id.* at 675. The Chamber reads this statement out of context.

To understand why the Board disagrees with the Chamber's view, further explanation of *Teamsters 357* is necessary. In that case, the Supreme Court rejected the Board's conclusion that a union had committed an unfair labor practice by operating an exclusive hiring hall pursuant to an agreement that contained a nondiscrimination clause but not three additional clauses that the Board had previously declared in its *Mountain Pacific* decision to be necessary to prevent '' 'unlawful encouragement of union membership.' '' *Id.* at 671 (quoting *Mountain Pacific Chapter,* 119 NLRB 883, 897 (1958)). The Court first noted that Congress had examined the operation of hiring halls and had decided not to ban them. *Id.* at 673–74. Next, the Court observed that NLRA Section 8(a)(3) '' 'does not outlaw all encouragement or discouragement of membership in labor organizations; only such as is accomplished by discrimination is prohibited.' '' *Id.* at 674–75 (emphasis added) (quoting *Radio Officers' Union* v. *NLRB,* 347 U.S. 17, 42–43 (1954)). Since the hiring hall agreement at issue in *Teamsters 357* ''specifically provide[d] that there will be no discrimination * * * because of the presence or absence of union membership,'' the Court determined that the Board was attempting to protect against nondiscriminatory encouragement of union membership. *Id.* at 675. This was impermissible because ''[w]here * * * Congress has aimed its sanctions only at specific discriminatory practices, the Board cannot go farther and establish a broader, more pervasive regulatory scheme.'' *Id.* at 676.

Properly understood, *Teamsters 357* does not preclude the Board from issuing the notice posting rule. The union had not committed an unfair labor practice in that case because its hiring hall agreement did not encourage or discourage union membership by ''discrimination.'' *See id.* at 674–75. By faulting the union for not including in its agreement clauses that the Board's *Mountain Pacific* rule had declared necessary to prevent '' 'unlawful encouragement of union membership,' '' *id.* at 671 (quoting *Mountain Pacific Chapter,* 119 NLRB at 897), the Board had attempted to regulate hiring halls in a manner that was facially inconsistent with the discrimination requirement embedded in NLRA Section 8(a)(3) and (b)(2). Accordingly, the Chamber makes too much of the Court's statement prohibiting the Board from ''establish[ing] a broader, more pervasive regulatory scheme'' when ''specific discriminatory practices'' have already been outlawed. *Id.* at 676. By that, the Court simply meant to remind the Board that it may not administratively amend Section 8(a)(3) and (b)(2) to prohibit nondiscriminatory activity that might be viewed as undesirable because those statutory sections are clearly aimed only at ''specific discriminatory practices.'' *Id.*[46]

This rulemaking does not involve those provisions of the NLRA that *Teamsters 357* addressed. Accordingly, the Board does not view that case as controlling the outcome of this proceeding.

6. Miscellaneous Matters

The Center on National Labor Policy, Inc., argues that the Board ''must be mindful of the Supreme Court's admonition in *Lechmere[, Inc.]* v. *NLRB,* 502 U.S. 527, 534 (1992), that an employer possesses First Amendment rights to its property.'' The Board disagrees that the property rights discussed in *Lechmere* emanate from the First Amendment, *see Thunder Basin Coal Co.* v. *Reich,* 510 U.S. 200, 217 n.21 (1994) (''The right of employers to exclude union organizers from their private property emanates from state common law * * *.''), and to the extent that the Center's reference to the First Amendment asserts a conflict between these regulations and employers' right to free speech, that argument is rejected for reasons explained above. After quoting extensively from *Lechmere,* the Center next contends that ''if a union has no access to company property to communicate with employees, neither does the Board without Section 10(c) authority.'' The Board rejects this argument because it fails to recognize the important substantive difference between the conduct at issue in *Lechmere,* which involved '' 'trespassory organizational activity' '' by nonemployees on the employer's grounds, *id.* at 535 (quoting *Sears, Roebuck & Co.* v. *San Diego Dist. Council of Carpenters,* 436 U.S. 180, 205 (1978)), and the regulations here which involve nothing more than the employer's responsibility to post an official notice of legal rights.

The Portland Cement Association (PCA) comments that the Board's failure to place the three law review articles that the Board cited to the NPRM[47] in the administrative docket is arbitrary and capricious. Although the Board provided the legal citations for these articles, PCA believes that it should not have to pay an electronic legal reporting service to access the material. The Board has placed these articles in the hard copy docket, but has not uploaded these articles to the electronic docket at *http://www.regulations.gov,* because such an action could violate copyright laws.[48]

Finally, one comment contends that requiring employers to set aside wall space for posting the notices violates the Takings Clause of the Fifth Amendment to the U.S. Constitution. The comment cites no authority for this proposition, which would seem to invalidate the notice-posting requirements under all other Federal and state workplace statutes. Accordingly, the Board rejects this contention.

In conclusion, the Board believe that it has fully demonstrated that it possesses sufficient statutory authority to enact the final rule, and therefore that it is not ''in excess of statutory jurisdiction'' or ''short of statutory right'' within the meaning of the Administrative Procedure Act, Section 706(2)(C), 5 U.S.C. 706(2)(C).

C. Factual Support for the Rule

As stated above, the Board found that the notice posting rule is needed because it believes that many employees are unaware of their NLRA rights and therefore cannot effectively exercise those rights. The Board based this finding on several factors: the comparatively small percentage of private sector employees who are represented by unions and thus have ready access to information about the

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[46] To the extent that the Board espoused a contrary view of *Teamsters 357* in a prior rulemaking proceeding, that view is abandoned. *See* Union Dues Regulation, 57 FR 43635, 43637–38 (Sept. 22, 1992), *withdrawn,* 61 FR 11167 (Mar. 19, 1996).

[47] *See* NPRM, 75 FR 80411 and fn. 3 above.

[48] The Board has also placed the other non-case materials cited to in this final rule into the hard copy docket.

NLRA; the high percentage of immigrants in the labor force, who are likely to be unfamiliar with workplace rights in the United States; studies indicating that employees and high school students about to enter the work force are generally uninformed about labor law; and the absence of a requirement that, except in very limited circumstances, employers or anyone else inform employees about their NLRA rights. 75 FR 80411.

A large number of comments contend that the Board failed to demonstrate the necessity of the notice posting rule. They challenge each of the premises (except the last) underlying the Board's belief that employees are generally unaware of their NLRA rights.

Many comments assert that, contrary to the Board's belief, the right to join a union is widely known and understood by employees. For example:

—I believe the majority of employees know about labor unions and how to form a union, and this poster is unnecessary.[49]

—[I]t is hard to imagine that there are many in the US who do not know that they can try to join a union.

—The fact of the matter is that if a group of employees are upset enough with their current management that they feel they need union representation, they already know what they need to do as a recourse. And if they do not immediately know how to respond, there are plenty of resources for them.[50]

—We, the employees, know the unions exist, * * * If the employees want to know about unions, they should research it themselves. It is not as though the information is not readily available.

Some posit that comparatively few private sector employees are represented by unions not because employees do not know that they can join unions, but because they have consciously rejected union representation for any number of reasons (*e.g.,* they do not believe that unions can help them; they do not want to pay union dues; they deem union representation unnecessary in light of other workplace protection statutes). For example:

—Is it not just as probable that people clearly understand unions, and they have decided they want no part of them?

—Labor unions charge approximately 1.3% of pre-tax earnings for monthly dues. Many workers, especially those who lost their good paying jobs during this recession and have found new jobs at $10.00-$11.00 per hour wages, need the dues money themselves, in order to support their families.

—Membership is down because so many of the good things unions fought for a long time ago have been legislated, at either the Federal or State level, and so the need for unions has declined.[51]

—[M]ost employees are very aware of their rights to unionize and many employees choose not to do so because of the rights they already have under our federal and state laws.

—In fact, one could say that the NLRA and other employment laws have succeeded to the degree that unions are NOT necessary in today's work environment.[52]

A few comments question the Board's belief that immigrant workers are unfamiliar with their workplace rights.[53] Several comments argue that the NLRA has been in effect for nearly 76 years, which is sufficient time for employees to learn about its provisions.[54]

A number of comments argue that the studies cited in the NPRM are from the late 1980s and early 1990s and are therefore out of date[55] (and also, some say, poorly supported).[56] Moreover, those studies, whatever their value when published, predate the wide use of the internet. Now there are many online sources of information concerning unions and union organizing, including the Board's own Web site. According to these comments, it should not be necessary to require employers to post notices of NLRA rights because employees who are interested in learning about unions can quickly and easily find such information online.[57] One comment, like some others, argues that "If it is so important that employees know their rights under the NLRB it should be the government or union whose responsibility it is to inform them."[58] Two comments suggest that the Board conduct a mass media informational campaign to that end, and one notes that the Board has in fact recently increased its public information efforts.[59] One comment urges the Board to conduct a study to ascertain current employees' level of NLRA knowledge before imposing a notice posting requirement.

In contrast, as discussed in more detail below, numerous comments from individuals, union organizers, attorneys representing unions, and worker assistance organizations agree with the Board that most employees are unfamiliar with their NLRA rights. Immigrant rights organizations state that immigrant workers largely do not know about their rights.

After careful consideration of the comments on both sides of this issue, the Board believes that many employees are unaware of their NLRA rights and that a notice posting requirement is a reasonable means of promoting greater knowledge among employees. To the extent that employees' general level of knowledge is uncertain, the Board believes that the potential benefit of a notice posting requirement outweighs the modest cost to employers. Certainly, the Board has been presented with no evidence persuasively demonstrating that knowledge of NLRA rights is widespread among employees.

The comments asserting that the right to join a union is widely known cite little, if any, support for that assertion. By contrast, many of the comments contending that employees are unfamiliar with their NLRA rights base their statements on personal experience or on extensive experience representing or otherwise assisting employees. Many individual workers, commenting on the rule, indicate their personal experiences with the lack of NLRA knowledge and concurrent strong support for the rule. For example:

—Even though most of my coworkers and supervisors were highly intelligent people, it is my experience that most workers are almost totally unaware of their rights under the NLRA.

—Knowing that there is a federal agency out there that will protect the rights of working people to organize is essential to the exercise of those rights.

—I had no idea that I had the right to join a union, and was often told by my employer that I could not do so. * * * I think employers should be required to post notices so that all employees may make an informed decision about their rights to join a union.[60]

—Workers have rights and they have the right to know them.[61]

—[T]here is a lot of ignorance among young workers and veteran workers alike with regard to knowledge of their right to organize. This is not a cure for employer intimidation, * * * but it is a step in the right direction.

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[49] Comment of the Employers Association.

[50] Comment of Malt-O-Meal Company (Malt-O-Meal).

[51] Comment of Tecton Products.

[52] Comment of Printing and Imaging Association of MidAmerica (Printing and Imaging Ass'n).

[53] *See, e.g.,* comment of the Printing and Imaging Ass'n.

[54] *See, e.g.,* comment of Coalition for a Democratic Workplace.

[55] *See, e.g.,* comments of Printing Industries of America and the Portland Cement Association.

[56] *See, e.g.,* comments of Cass County Electric Cooperative and Pilchak Cohen & Tice, P.C.

[57] As one person states, "The internet has long ago replaced lunch room bulletin board postings as the means by which employees learn of and exercise their rights."

[58] Such comments appear to misunderstand that by this rule, the Board is indeed seeking to inform employees of the provisions of the NLRA, using the most accessible venues to reach them, their workplaces.

Other comments question why this rule does not mandate notice posting by governmental employers. The NLRA does not cover such employers. *See* Section 2(2), 29 U.S.C. 152(2).

[59] Comment of Fisher & Phillips, LLP.

[60] Comment of Member, Local 150, Operating Engineers.

[61] Comment of Organizer, IBEW.

—As an employee at will, I was not aware of my rights to form a union or any rights that I may have had under the NLRA.[62]

—I worked in the construction materials testing industry for about eight years. During that time I had no idea I had the right to join a union.[63]

—As a working class citizen, I am well aware of just how rare it is for my fellow workers to know their rights. For that reason, this is a rule that is extremely overdue. * * *.

A sampling of comments from labor attorneys, workers' organizations, and labor organizations is consistent with these employees' comments:

—It is my experience that upwards of 95% of employees have no idea what their rights are with respect to labor unions.[64]

—In fact, I have had many employees over the years tell me that their employers have told them that they do not allow unions at their workplace.[65]

—Workers today do not know what their rights are under the NLRA. As a Union organizer with more than 20 years of experience, without exception, every worker I encounter thinks that it is perfectly legal for their employer to fire them simply for saying the word union, or even to speak with other employees at work about general working conditions. The protections afforded workers to engage in protected concerted activity around workplace issues is unknown to the majority of workers today.[66]

—It is the experience of [Service Employees International Union (SEIU) Local 615] that many employees are woefully unaware of their rights under the NLRA and that that lack of knowledge makes employees vulnerable when they desire to address their wages and working conditions with the employers.[67]

—I have participated in hundreds of organizing campaigns involving thousands of employees. In my experience, most people had no idea what their rights were to organize or join unions.[68]

Some unions also assert that even unionized employees often do not have a clear understanding of the NLRA. One union staff representative writes that "there seems to be a disconnect, most of our membership does not know a thing about NLRA." [69] Another union steward comments similarly:

> I saw how union members were often unaware of their rights unless the union specifically did outreach and member education, or unless the employee ran into a problem and came to a steward for assistance. * * *
>
> Notice to employees, however, could provide a starting point for those employees to try to assert rights that they currently have on paper but often do not have in practice.

Several immigrant workers' organizations comment on the difficulty that this population has in understanding their rights and accessing the proper help when needed.[70] These organizations note that laws in the immigrants' home countries may be quite different from those of the United States, and the high barrier that lack of fluency in English creates in making these persons aware of their rights under the NLRA.[71] These organizations also contend that because guestworkers in particular can work only for the employer that requested their visa, they are extremely vulnerable to labor violations, and that these employers routinely misrepresent the existence of NLRA rights.[72] The National Day Laborers Organizing Network claims that "most workers are not aware of their right to organize."

One immigrant construction worker, commenting favorably on the proposed rule, explains that she learned English after coming to the United States from Poland: "While working as a testing technician, I had no idea I had the right to join a union." She writes:

> I think a government written notice posted in the workplace would be a critical source of information for employees who want to join a union. Especially in this industry where many people like myself are foreign born, there is a language barrier that adds to the difficulty in understanding our legal rights. I take government posted notices seriously and believe other people do as well.[73]

Significantly, the Board received numerous comments opposing the rule precisely because the commenters believe that the notice will increase the level of knowledge about the NLRA on the part of employees. Specifically, they predict that the rule will lead to increased unionization and create alleged adverse effects on employers and the economy generally. For example, Baker and Daniels LLP comments that as more employees become aware of their NLRA rights, they will file more unfair labor practice charges and elect unions to serve as their collective-bargaining representatives. But fear that employees may exercise their statutory rights is not a valid reason for not informing them of their rights.

Moreover, the NLRA protects the right to join a union and to refrain from doing so and the notice so states. In addition, the NLRA confers and protects other rights besides the right to join or refrain from joining unions. Section 7 provides that employees have the right "to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection[.]" Such protected concerted activities include concertedly complaining or petitioning to management concerning their terms and conditions of employment;[74] concertedly petitioning government concerning matters of mutual interest in the workplace;[75] and concertedly refusing to work under poor working conditions.[76] Few if any of the comments contending that employees know about their NLRA rights assert that employees are aware of the right to engage in such protected concerted activities in the nonunion setting. By contrast, as shown above, many comments favoring the rule report that nonunion employees are especially unlikely to be aware of their NLRA rights.

Although some comments contend that the articles cited by the Board in support of its belief that employees are largely unaware of the NLRA rights are old and inadequately supported,[77] they cite no more recent or better supported studies to the contrary. In addition, the percentage of the private sector workforce represented by unions has declined from about 12 percent in 1989, about the time the articles cited in the NPRM were published, to 8 percent presently;[78] thus, to the extent that lack of contact with unions contributed to lack of knowledge of NLRA rights 20 years ago, it probably is even more of a factor today.[79]

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[62] Comment of International Staff Representative, Steelworkers.

[63] Comment of Member, Local 150, Operating Engineers.

[64] Comment of Organizer, Local 150, Operating Engineers.

[65] Comment of Strokoff and Cowden.

[66] Comment of Organizer, Teamsters, Local 117.

[67] Comment of SEIU Local 615.

[68] Comment of Financial Secretary, Local 150, Operating Engineers.

[69] Comment of Staff Representative, Steelworkers.

[70] *See e.g.*, comments of National Immigration Law Center and Latino Justice.

[71] *See, e.g.*, comment of Friends of Farmworkers, Inc.

[72] Comment of Alliance of Guestworkers for Dignity.

[73] Comment of Instructor, Apprenticeship and Skill Improvement Program, Local 150, Operating Engineers.

[74] *North Carolina License Plate Agency #18*, 346 NLRB 293 (2006), enf'd. 243 F. Appx. 771 (4th Cir. 2007) (unpublished).

[75] *Eastex, Inc.* v. *NLRB*, above, 437 U.S. at 565–567.

[76] *NLRB* v. *Washington Aluminum Co.*, 370 U.S. 9, 14 (1962).

[77] *See* comment of Cass County Electric Cooperative. For example, Professor Morris, author of two of the articles cited by the Board (as "see also") listed no authority to support his assertion that employees lack knowledge about the NLRA. *See* Charles J. Morris, "*Renaissance at the NLRB*," above at fn. 3; Morris, "*NLRB Protection in the Nonunion Workplace*," above at fn. 3.

[78] See DeChiara, "The Right to Know," above at fn. 1; 75 FR 80411 fn. 4.

[79] The Printing and Imaging Association discussed these declining rates of unionization, and

In support of their contention that NLRA rights are widely known among employees, several comments observe that the Board's processes for holding representation elections and investigating and remedying unfair labor practices are invoked tens of thousands of time a year.[80] That is true. However, the civilian work force includes some 108 million workers potentially subject to the NLRA.[81] Thus, the number of employees who invoke the Board's processes make up only a small percentage of the covered workforce. Accordingly, the Board does not consider the number of times the Board's processes are invoked to be persuasive evidence that workers generally are aware of their NLRA rights.

Finally, remarks in multiple opposing comments strongly suggest that the commenters themselves do not understand the basic provisions of the NLRA:

—If my employees want to join a union they need to look for a job in a union company.[82]

—[a]nytime one of our independent tradesmen would like to join the union they are free to apply and be hired by a union contractor.

—If a person so desires to be employed by a union company, they should take their ass to a union company and apply for a union job.

—Belonging to a union is a privilege and a preference—not a right.[83]

—If they don't like the way I treat them, then go get another job. That is what capitalism is about.[84]

—We are not anti-union; but feel as Americans, we must protect our right not to be signatory to a third party in our business.[85]

—If one desires to be a part of a union, he or she is free to apply to those companies that operate with that form of relationship.[86]

—I also believe employees already have such notice by understanding they retain the right to change employers whenever they so choose.[87]

These comments reinforce the Board's belief that, in addition to informing employees of their NLRA rights so that they may better exercise those rights, posting the notice may have the beneficial side effect of informing employers concerning the NLRA's requirements.[88]

As to the contention that information concerning unions is widely available on the internet, including on the Board's Web site, the Board responds that not all employees have ready access to the internet. Moreover, it is reasonable to assume that an employee who has no idea that he or she has a right to join a union, attempt to organize his employer's workforce, or engage in other protected concerted activities, would be less likely to seek such information than one who is aware of such rights and wants to learn more about them.[89] The Board is pleased that it has received a large number of inquiries at its Web site seeking information concerning NLRA rights, but it is under no illusion that that information will reach more than a small fraction of the workforce in the foreseeable future.

Several comments assert that, in any event, requiring the posting of notices will not be effective in informing employees of their rights, because employees will simply ignore the notices, as the comments contend they ignore other workplace postings. "Posters are an ineffective means of educating workers and are rarely read by employees." [90] Other comments argue that adding one more notice to the many that are already mandated under other statutes will simply create more "visual clutter" that contributes to employees' disinclination to pay attention to posted notices. As one employer stated, "My bulletin boards are filled with required notifications that nobody reads. In the past 15 years, not one of our 200 employees has ever asked about any of these required postings. I have never seen anyone ever read one of them." [91] Another wrote, "Employers are already required to post so many notices that these notices have lost any semblance of effectiveness as a governmental communication channel."

To these comments, the Board responds that the experiences of the commenters is apparently not universal; other comments cited above contend that employees are more knowledgeable about their rights under statutes requiring the posting of notices summarizing those rights than about their NLRA rights. Moreover, not every employee has to read workplace notices for those notices to be effective. If only one employee of a particular employer reads the Board's notice and conveys what he or she has read to the other employees, that may be enough to pique their interest in learning more about their NLRA rights. In addition, the Board is mandating electronic notice to employees on an internet or intranet site, when the employer customarily communicates with its employees about personnel rules or policies in that way, in order to reach those who read paper notices and those who read electronic postings. As for the comment that argues that the Board can use public service announcements or advertising to reach employees, the Board believes that it makes much more sense to seek to reach directly the persons to whom the Act applies, in the location where they are most likely to hear about their other employment rights, the workplace.[92]

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cited Professor Kate Bronfenbrenner's doctoral dissertation, "Seeds of Resurgence: Successful Union Strategies for Winning Certification Elections and First Contracts in the 1980s and Beyond," (available at *http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1002&context=reports&sei-redir=1#search="Kate+Bronfenbrenner,+Uneasy+terrain:+The+impact+of+capital+mobility+on+workers,+wages,+and+union"*) to argue that the higher win rates for unions in elections involving both immigrant and older workers argued against the need for the proposed rule.

The Board is not addressing the many debated causes of the declining rates of private sector unionization in the United States. This rule simply accepts those rates as given, and seeks to increase the knowledge of NLRA provisions among those without readily available sources of reliable information on these provisions.

[80] *See, e.g.,* comment of Desert Terrace Healthcare Center.

[81] *See* Bureau of Labor Statistics, Economic News Release, Table B–1, "Employees on nonfarm payrolls by industry sector and selected industry detail," May 3, 2011 (seasonally adjusted data for March 2011) *http://data.bls.gov/timeseries LNS11300000?years_option=specific_years&include_graphs=true&to_year=2010&from_year=1948* (last visited June 6, 2011).

[82] Comment of P & L Fire Protection, Inc.

[83] Comment of OKC Tea Party.

[84] Comment of Montana Records Management, LLP.

[85] Comment of Humphrey & Associates, Inc.

[86] Comment of Medina Excavating, Inc.

[87] Comment of Olsen Tool & Plastics, Co.

[88] And as one union official writes:

> Having been active in labor relations for 30 years I can assure you that both employees and employers are confused about their respective rights under the NLRA. Even union officers often do not understand their rights. Members and non-members rarely understand their rights. Often labor management disputes arise because one or both sides are misinformed about their rights. Often the employer takes an action it truly believes is within its rights when it is not.

Comment of Civil Service Employees Association.

[89] Thus, the many comments that assert that employees can just use Internet search engines to find out about unions (see, *e.g.*, comments of Winseda Corp. Homestead Village, Inc.), misapprehend the breadth of the rights of which the Board seeks to apprise all employees. As stated above, Section 7 is not merely about the right to join or refrain from joining a labor organization, but more broadly protects the right of employees to engage in "concerted activities" for the purpose of "mutual aid or protection." It is this right that is the most misunderstood and simply not subject to an easy Internet search by employees who may have no idea of what terms to use, or even that such a right might be protected at all.

[90] Comment of Riverbend Community Mental Health.

[91] Comment of Farmers Cooperative Compress.

[92] Printing Industries of America uses election data to argue that the Labor Department's notice posting rule for Federal contractors has not been effective because the rate of elections has not increased. It is unclear whether any meaningful conclusion can be drawn from election data for only

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Some comments argue that the Board's notice posting rule does not go far enough to effectuate the NLRA. One labor attorney argues that the Board should require annual trainings for supervisors and captive audience meetings where employees are read their rights by supervisors and Board agents and the employees would have to acknowledge receiving those notices.[93] The same comment suggests banning captive audience meetings by employers. The comment concludes that the NPRM ''doesn't go anywhere near far enough. It is, however, an important and worthwhile advancement.''[94] Another comment also suggests that annual, mandatory training classes for employees would be desirable.[95] The Board believes that this Rule strikes the proper balance in communicating necessary information about the NLRA to employees.

For all the foregoing reasons, the Board is persuaded that many private sector employees are unaware of their NLRA rights.[96]

III. Summary of Final Rule and Discussion of Related Comments

The Board's rule, which requires employers subject to the NLRA to post notices of employee rights under the NLRA, will be set forth in Chapter 1, Part 104 of Volume 29 of the Code of Federal Regulations (CFR). Subpart A of the rule sets out definitions; prescribes the size, form, and content of the employee notice; and lists the categories of employers that are not covered by the rule. Subpart B sets out standards and procedures related to allegations of noncompliance and enforcement of the rule. The discussion below is organized in the same manner and explains the Board's reasoning in adopting the standards and procedures contained in the regulatory text, including the Board's responses to the comments received.

Subpart A—Definitions, Requirements for Employee Notice, and Exceptions From Coverage Definitions

A. The Definitions

For the most part, the definitions proposed in the rule are taken from those appearing in Section 2 of the NLRA, 29 U.S.C. 152. No comments were received concerning those definitions, and they are unchanged in the final rule. A number of comments were received concerning the definition of other terms appearing in the rule. Those comments are addressed below.

B. Requirements for Employee Notice

1. Content Requirements

The notice contains a summary of employee rights established under the NLRA. As explained above, the Board believes that requiring notice of employee rights is necessary to carry out the provisions of the NLRA. Accordingly, § 104.202 of the proposed rule requires employers subject to the NLRA to post and maintain the notice in conspicuous places, including all places where notices to employees are customarily posted, and to take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material, or otherwise rendered unreadable.

As stated in the NPRM, the Board considered the substantive content and level of detail the notice should contain regarding NLRA rights. In arriving at the content of the notice of employee rights, the Board proposed to adopt the language of the Department of Labor's final rule requiring Federal contractors to post notices of employees' NLRA rights. 29 CFR part 471. In the NPRM, the Board explained that it tentatively agreed with the Department of Labor that neither quoting the statement of employee rights contained in Section 7 of the NLRA nor briefly summarizing those rights in the notice would be likely to effectively inform employees of their rights. Rather, the language of the notice should include a more detailed description of employee rights derived from Board and court decisions implementing those rights. The Board also stated that it saw merit in the Department of Labor's judgment that including in the notice examples, again derived from Board and court decisions, of conduct that violates the NLRA will assist employees in understanding their rights. 75 FR 80412.

Prior to issuing the NPRM, the Board carefully reviewed the content of the notice required under the Department of Labor's final rule, which was modified in response to comments from numerous sources, and tentatively concluded that that notice explains employee rights accurately and effectively without going into excessive or confusing detail. The Board therefore found it unnecessary, for purposes of the proposed rulemaking, to modify the language of the notice in the Department of Labor's final rule. Moreover, the Board reasoned that because the notice of employee rights would be the same under the Board's proposed rule as under the Department of Labor's rule, Federal contractors that have posted the Department of Labor's required notice would have complied with the Board's rule and, so long as that notice is posted, would not have to post a second notice. *Id.*

The proposed notice contained examples of general circumstances that constitute violations of employee rights under the NLRA. Thus, the Board proposed a notice that provided employees with more than a rudimentary overview of their rights under the NLRA, in a user-friendly format, while simultaneously not overwhelming employees with information that is unnecessary and distracting in the limited format of a notice. As explained below, the Board also tentatively agreed with the Department of Labor that it is unnecessary for the notice to include specifically the right of employees who are not union members and who are covered by a contractual union-security clause to refuse to pay union dues and fees for any purpose other than collective bargaining, contract administration, or grievance adjustment. See *Communications Workers* v. *Beck,* 487 U.S. 735 (1988). *Id.* at 80412–80413.

The Board specifically invited comment on the statement of employee rights proposed for inclusion in the required notice to employees. In particular, the Board requested comment on whether the notice contains sufficient information of employee rights under the NLRA; whether it effectively conveys that information to employees; and whether it achieves the desired balance between providing an overview of employee rights under the Act and limiting unnecessary and distracting information. *Id.* at 80413.

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a few months, especially since the number of contractors covered by the Labor Department's rule is only a small fraction of the number of employers subject to the NLRA. In any event, the Board does not believe that that is the proper criterion by which to measure the rule's effectiveness. The purpose of requiring the posting of such notices is to inform employees of their rights so that they may exercise them more effectively, not to obtain any particular result such as the filing of more election petitions.

The same comment also cites a couple of textbooks which it asserts are popularly used in high schools today to argue that labor history is being taught to today's students. The Board is unable to assess the truth of that assertion, but regardless, it is unclear whether students necessarily connect this history to their future rights as employees.

[93] Comment of Weinberg, Roger & Rosenfeld.

[94] *Id.*

[95] Comment of Staff Representative, Steelworkers.

[96] Accordingly, the Board finds it unnecessary to conduct a study to determine the extent of employees' knowledge of NLRA rights. The Board further observes that even if only 10 percent of workers were unaware of those rights, that would still mean that more than 10 million workers lacked knowledge of one of their most basic workplace rights. The Board believes that there is no question that at least a similar percentage of employees are unaware of the rights explained in the notice. In the Board's view, that justifies issuing the rule.

The proposed Appendix to Subpart A included Board contact information and basic enforcement procedures to enable employees to learn more about their NLRA rights and how to enforce them. Thus, the required notice confirmed that unlawful conduct will not be permitted, provided information about the Board and about filing a charge with the Board, and stated that the Board will prosecute violators of the NLRA. The notice also indicated that there is a 6-month statute of limitations for filing charges with the Board alleging violations and provided Board contact information. The Board invited suggested additions or deletions to these provisions that would improve the content of the notice of employee rights. *Id.*

The content of the proposed notice received more comments than any other single topic in the proposed rule. But of the thousands of comments that address the content of the notice, the majority are either very general, or identical or nearly identical form letters or ''postcard'' comments sent in response to comment initiatives by various interest groups, including those representing employers, unions, and employee rights organizations. Many comments from both individuals and organizations offer general support for the content of the proposed notice, stating that employee awareness of basic legal rights will promote a fair and just workplace, improve employee morale, and foster workforce stability, among other benefits.[97] More specifically, one comment asserts that the proposed notice ''contains an accurate, understandable and balanced presentation of rights.'' [98] The United Transportation Union contends that the ''notice presents an understandable, concise and extremely informative recitation of workers' rights, without getting bogged down in extraneous language, incomprehensible legalese or innumerable caveats and exceptions.''

Other comments were less supportive of the content of the proposed notice and the notice-posting requirement in general. A significant number of comments, including those from many individuals, employers, and employer industry and interest groups, argue that the content of the notice is not balanced, and appears to promote unionization instead of employee freedom of association. In particular, many comments state that Section 7 of the NLRA includes the right to refrain from union activity, but claim that this right is given little attention in comparison to other rights in the proposed notice. Several comments also argue that the proposed notice excludes rights associated with an anti-union position, including the right to seek decertification of a bargaining representative, the right to abstain from union membership in ''right-to-work'' states, and rights associated with the Supreme Court's decision in *Communications Workers* v. *Beck.*[99] Comments also suggest that the notice should include a warning to employees that unionizing will result in a loss of the right to negotiate directly with their employer.[100] Many of these comments argue that a neutral government position on unionization would be more inclusive of anti-union rights.[101]

A number of comments address the issue of complexity, and argue that the Board's attempt to summarize the law is flawed because the Board's decisional law is too complex to condense into a single workplace notice.[102] Some of the comments addressing this issue note that NLRA law has been developed over 75 years, and involves interpretations by both the NLRB and the Federal courts, sometimes with conflicting results. The Chamber of Commerce cites the ''NLRB's Basic Guide to the National Labor Relations Act: General Principles of Law Under the Statute and Procedures of the National Labor Relations Board'' (Basic Guide to the NLRA) (1997), available at *http://www.nlrb.gov/publications/brochures*, to make their point about legal complexity. In the Foreword to the Basic Guide to the NLRA, the Board's General Counsel states that ''[a]ny effort to state basic principles of law in a simple way is a challenging and unenviable task. This is especially true about labor law, a relatively complex field of law.'' The thrust of these comments about legal complexity was that the NLRA is complex, dynamic, and nuanced, and any attempt to summarize it in a workplace notice will result in an oversimplification of the law and lead to confusion, misunderstanding, inconsistencies, and some say, heightened labor-management antagonism. Moreover, some comments express concern that Board member turnover could result in changes to the law, which may require frequent updates to the notice.[103]

Many comments suggest that the required notice should include only the specific rights contained in Section 7 of the NLRA or, at most, the rights and obligations stated in employee advisories on the NLRB's Web site. The comments favoring a more general notice suggest that the detailed list of rights far exceeds the ''short and plain'' description of rights that the Board has found sufficient to ''clearly and effectively inform employees of their rights under the Act'' in unfair labor practice cases.[104] *See Ishikawa Gasket America, Inc.,* 337 NLRB 175 (2001), enfd. 354 F.3d 534 (6th Cir. 2004). A comment from Fisher & Phillips LLP argues that, under the Board's current remedial practices, only an employer that egregiously violates the Act on numerous occasions is required to post such an inclusive list of rights.

Finally, a number of comments suggest that the notice should include a list of employer rights, namely the right to distribute anti-union literature and the right to discuss the company's position regarding unions.

In addition to the general comments about the proposed notice, many comments offer suggestions for specific revisions to individual provisions within the five sections of the proposed notice: the introduction, the statement of affirmative rights, the examples of unlawful conduct, the collective-bargaining provision, and the coverage information. The following discussion presents the comments related to individual provisions of the notice, followed by the Board's decisions regarding the content of the final notice made in response to those comments.

a. Comments Regarding the Introduction

The introduction to the notice of rights in the proposed rule stated:

> The National Labor Relations Act (NLRA) guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity. Employees covered by the NLRB are protected from certain types of employer and union misconduct. This Notice gives you general information about your rights, and about the obligations of employers under the NLRA. Contact the National Labor Relations Board (NLRB), the Federal agency that investigates and resolves complaints under the NLRA, using the contact information supplied below, if you have any questions about specific rights that may apply in your particular workplace.

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[97] *See* comments of the National Immigration Law Center, Service Employees International Union, and Weinberg, Roger & Rosenfeld.

[98] Comment of David Fusco, a labor and employment attorney.

[99] *See* comments of Pilchak, Cohen & Tice, American Trucking Association, and Electrical and Mechanical Systems Inc.

[100] *See, e.g.* comment of the Heritage Foundation.

[101] *See, e.g.,* comment of the National Right to Work Committee.

[102] *See, e.g.,* comment of COLLE, Retail Industry Leaders Association.

[103] *See* comment of Capital Associated Industries, Inc. and National Association of Manufacturers.

[104] *See e.g.* comments of COLLE and Coalition for a Democratic Workplace.

75 FR 80418–80419 (footnote omitted).

The Board received a few suggestions for changes to the introduction of the notice. The first comment suggests including language stating that employees are required to contact their ''executive manager'' or ''administrative team'' before contacting the NLRB and suggests that the NLRB refuse to process employees' complaints until the employees first raise the issue with his or her ''management team.'' The second comment, from COLLE, urges the Board to add language in the introduction alerting employees that they also have the right to refrain from engaging in union activity. The comment suggests that by not including the right to refrain from union activity in the introduction, the Board is showing a bias toward union organizing. The comment argues that a more neutral notice would include both the right to engage and not engage in union activity at the beginning of the document, rather than wait to first mention the right to refrain in the affirmative rights section.

The Board does not agree with the proposal that employees be required to contact management officials as a prerequisite to contacting the Board. Such a procedural requirement is not contemplated in the NLRA and could discourage employees from exercising or vindicating their rights.

The Board agrees, however, that the introduction should include both the rights to engage in union and other concerted activity and the right to refrain from doing so. The Board believes that adding the right to refrain to the introduction will aid in the Board's approach to present a balanced and neutral statement of rights. Accordingly, the first sentence in the introduction to the notice in the final rule will state:

> The National Labor Relations Act (NLRA) guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity or to refrain from engaging in any of the above activity.

b. Comments Regarding Affirmative Statement of Rights

The proposed notice contains the following statement of affirmative rights: Under the NLRA, you have the right to:

> Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.
>
> Form, join or assist a union.
>
> Bargain collectively through representatives of employees' own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions.
>
> Discuss your terms and conditions of employment or union organizing with your co-workers or a union.
>
> Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union.
>
> Strike and picket, depending on the purpose or means of the strike or the picketing.
>
> Choose not to do any of these activities, including joining or remaining a member of a union.

75 FR 80419.

The majority of comments addressing the affirmative rights section were general and did not specifically address the language of the individual provisions. Generally, labor organizations and employee advocate groups favor the Board's language. A comment from the United Food and Commercial Workers International Union asserts that the approach ''achieves an appropriate balance between providing sufficiently clear information about employee's basic statutory rights and limiting unnecessary and confusing information about peripheral rights.'' On the other hand, comments from employer groups do not favor the Board's language. More specifically, employer groups argue that the notice is biased toward union organizing. Generally, the comments argue that the right to refrain from engaging in union activity should have a more prominent place on the notice, rather than being the last of the rights listed on the poster. Many of these comments contend that the notice should include the right not to engage in specific union-related activities.

Other comments about the notice's statement of affirmative rights are directed at individual provisions of the notice. A discussion of those comments is set out in more detail below.

i. The Right To Organize and the Right To Form, Join and Assist a Union

A few comments generally state that the notice should include the consequences of exercising the right to organize, join or form a union.[105] For example, several comments argue that employees should be informed that if they join a union they give up the right to deal directly with their employers. Another comment argues that employees should be informed of the cost of organizing a union, including the cost of dues and the potential for the company to shut down because of increased labor costs associated with a unionized workforce. Other comments suggest including language informing employees that they can be fired for not paying their union dues.

The Board rejects those suggestions. The notice is intended to inform employees of the rights that they have under the NLRA and does not include the benefits or consequences of exercising any of the enumerated rights. Adding the consequences of one right would require revising the entire notice to include potential consequences—both positive and negative—of all the protected rights. For example, the notice would need to include the consequences of refraining from joining a union, such as not being permitted to vote on contract ratifications or attend union membership meetings. The necessary additions to the notice would create a notice that is not a concise list of rights, but more likely a pamphlet-sized list of rights and explanations. In addition, the consequences of unionization are unique to each unionized workplace, so it would be impossible to include a list of general consequences that could apply uniformly to all unionized workplaces. If employees have questions about the implications of any of their rights, they can contact an NLRB regional office.

Assisted Living Federation of America (ALFA) suggests that the affirmative rights section should be revised to reflect the anti-union position. For example, rather than the current provision that states that employees have a right to ''[o]rganize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment,'' the comment suggests the following provision: ''you have the right to organize with other employees in opposition to a particular union or unions.'' And ''you have the right to: refuse to form, join, or assist a union, including the right to refuse to sign a union card, attend a union meeting or supply a union with information concerning you, your co-worker or your job,'' rather than ''[you have the right to] [f]orm, join or assist a union.'' The Board disagrees. The Board's proposed notice language reflects the language of the NLRA itself, which specifically grants affirmative rights, including nearly all of those listed in the notice. Also, the notice, like the NLRA, states that employees have the right to refrain from engaging in all of the listed activities. The Board therefore sees no need to recast the notice to further emphasize the right to oppose unions.

ii. The Right To Bargain Collectively

Two comments suggest that the collective-bargaining provision is misleading and vague. The first comment, from COLLE, argues that the provision is misleading because it fails to acknowledge that an employer does not have an obligation under the NLRA to consent to the establishment of a collective-bargaining agreement, but instead only has the statutory duty to ''meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment.'' 29 U.S.C. 158(d). The comment also argues that the failure to reach an agreement is not per se unlawful, and the finding of an unfair labor practice depends on whether the parties engaged in good-faith bargaining. This comment suggests that the notice should instead note that the NLRA requires parties to bargain in good faith but does not compel agreement or the making of concessions, and that, in some instances, a bargaining impasse will result, permitting the parties to exercise their economic weapons, such as strikes or lockouts. The second comment, made generally by more than a few organizations and individuals, suggests that the notice add a statement indicating that employers and unions have an obligation to bargain in good faith.

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[105] *See, e.g.,* comment of Pilchak Cohen & Tice.

The Board finds it unnecessary to add the suggested amplifications. For one thing, the notice does state that employers and unions have a duty to bargain in good faith, ''in a genuine effort to reach a written, binding agreement setting your terms and conditions of employment.'' In the Board's view, the statement that the parties must make a ''genuine effort'' to reach agreement necessarily implies that they are not, in the end, required to reach one. The Board deems the notice language to be adequate on this point. Finally, for the reasons already discussed, the Board rejects the contention that the notice should discuss the implications or consequences of unsuccessful bargaining.

iii. The Right To Discuss With Co-Workers or Union

A comment from the National Immigration Law Center suggests that the use of the phrase ''terms and conditions of employment'' is unclear especially to employees who are unaware of their rights under the NLRA. The comment recommends that, in order to clarify, the Board add the phrase ''including wages and benefits.'' The suggested language would read, ''you have the right to: discuss your terms and conditions of employment, including wages and benefits, or union organizing with your co-workers or a union.''

The Board agrees that adding the suggested language would clarify the provision. The list of affirmative rights uses the terms ''wages, hours, and other terms and conditions of employment'' to describe what unions may negotiate. The notice then uses the terms ''wages, benefits, hours, and other working conditions'' to describe the right to bargain collectively for a contract. Those statements make it clear that ''terms and conditions of employment'' includes wages and benefits. But then immediately following those two statements, the notice states that employees may discuss ''terms and conditions of employment,'' but does not include any clarifying language. In order, to create a more uniform notice and clarify the extent to which employees may discuss their terms and conditions of employment the final notice will read, ''Under the NLRA, you have a right to: Discuss your wages and benefits and other terms and conditions of employment or union organizing with your co-workers or a union.''

iv. The Right To Strike and Picket

The notice's reference to the right to strike and picket received a few comments from law firms and other organizations representing employers' interests. The comments suggest that the provision is flawed because of the absence of further limitations, exceptions, and distinctions.[106] Generally, the comments argue that not all strikes and pickets are protected. COLLE argues that the notice should inform employees of the limitations of strikes encompassed by ''depending on the purpose or means of the strike or pickets''—for example, whether the strike is for recognition or bargaining, whether the strike has a secondary purpose, whether picketing involves a reserved gate, whether the strike is a sit-down or minority strike, whether the conduct is a slowdown and not a full withholding of work, whether the strike is partial or intermittent, whether the strike involves violence, and whether the strike is an unfair labor practice strike or an economic strike. ALFA argues that employees should be informed that if the employer is a healthcare institution, ''employees do not have the right to participate in a union-initiated strike or picket unless the union has provided the employer and federal and state mediation agencies with the required 10 days notice.''

The Board disagrees. By necessity, an 11x17-inch notice cannot contain an exhaustive list of limitations on and exceptions to the rights to strike and picket, as suggested by employers. However, because exercising the right to strike can significantly affect the livelihood of employees, the Board considers it important to alert employees that there are some limitations to exercising this right. The Board is satisfied that the general caveat, ''depending on the purpose or means of the strike or the picketing,'' together with the instruction to contact the NLRB with specific questions about the application of rights in certain situations, provides sufficient guidance to employees about the exercise of their rights while still staying within the constraints set by a necessarily brief employee notice.

v. The Right To Refrain From Union or Other Protected Concerted Activity

All the comments that discuss the right to refrain from engaging in union activity criticize what they contend to be its lack of prominence. ALFA accuses the Board of ''burying'' the provision by placing it last, below the other rights to engage in union and other concerted activity. The U.S. Chamber of Commerce suggests that the notice include ''or not'' after each of the enumerated rights. For example, ''you have the right to: form join or assist a union, or not.'' (Emphasis added.) Other suggested revisions to amplify the prominence of the provision include stating that employees have the right to refrain from protected, concerted activities and/or union activities; stating that employees' right to refrain includes the right to actively oppose unionization, to not sign union authorization cards, to request a secret ballot election, to not be a member of a union or pay dues or fees (addressed further below), or to decertify a union (also addressed below); and stating that employees have the right to be fairly represented even if not a member of the union. One employer suggests that if the notice retains its current emphasis favoring union activity and disfavoring the freedom to refrain from such activity, employers will need to post their own notices that emphasize and elaborate on the right to refrain.

The Board received at least four comments that argue that the notice, as written, may make employees believe that the employer is encouraging unionization. Two of those comments suggest that an employer is protected from compelled speech by Section 8(c) of the NLRA. (The Board has already rejected the latter argument; *see* section

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[106] *See* comments of ALFA, Carrollton Health and Rehabilitation Center, and COLLE.

II, subsection B, ''Statutory Authority,'' above.)

The contention that the right to refrain from engaging in union activity is ''buried'' in the list of other affirmative rights or that the Board is biased in favor of unionization because of the choice of placement is without merit. The list of rights in the proposed notice is patterned after the list of rights in Section 7 of the NLRA, 29 U.S.C. 157. Section 7 lists the right to refrain last, after stating several other affirmative rights before it. In addition, the Board's remedial notices list the right to refrain last. *See Ishikawa Gasket America, Inc.*, above. So does the Board's Notice of Election. In addition, the notice required by this rule states that it is illegal for an employer to take adverse action against an employee ''because [the employee] choose[s] not to engage in any such [union-related] activity.'' The Board has revised the introduction of the notice to include the right to refrain—this addition further highlights an employee's right to refrain from union activity. Finally, the Board believes that people understand a right as different from an obligation and thus will, for example, understand that the right to organize a union includes the right not to do so. Accordingly, the Board concludes that the notice sufficiently addresses the right to refrain among the list of statutory rights. In addressing the numerous comments questioning the Board's neutrality, the Board points out that in Section 1 of the NLRA, Congress declared that it is the policy of the United States to mitigate or eliminate obstructions to the free flow of commerce ''by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.'' 29 U.S.C. 151. Thus, by its own terms, the NLRA encourages collective bargaining and the exercise of the other affirmative rights guaranteed by the statute. In doing so, however, the NLRA seeks to ensure employee choice both to participate in union or other protected concerted activity and to refrain from doing so.

Turning to the issues of whether the notice creates the impression that the employer is encouraging unionization and whether an employer can be compelled to post the notice which contains information the employer would otherwise not share with employees, the Board disagrees with both arguments. First, the notice clearly states that it is from the government. Second, in light of the other workplace notice employees are accustomed to seeing, employees will understand that the notice is a communication to workers from the government, not from the employer. Finally, as discussed above, NLRA Section 8(c) protects employers' right to express any ''views, argument, or opinion'' ''if such expression contains no threat of reprisal or force or promise of benefit.'' The rule does not affect this right. Therefore, if an employer is concerned that employees will get the wrong impression, it may legally express its opinion regarding unionization as long as it does so in a noncoercive manner.

Critics of the notice contend that the notice should contain a number of additional rights and also explanations of when and how an employee may opt out of paying union dues. Thus, most employer groups argue that the notice should contain a statement regarding the right to decertify a union. A number of those comments state that the notice should provide detailed guidance on the process for decertifying a union. Others suggest that the notice should contain instructions for deauthorizing a union security clause. A majority of employers and individuals who filed comments on the content of the notice urge the Board to include a notice of employee rights under *Communications Workers* v. *Beck*. Baker & McKenzie suggests adding a provision informing employees that for religious purposes an employee may opt out of paying dues to a union.[107] A few comments also suggest that the notice add any rights that employees may have in ''right-to-work'' states. As indicated previously, numerous comments suggest the inclusion of other rights of employees who do not desire union representation. Baker & McKenzie suggests a list of 26 additional affirmative rights, most of which only affect employees in a unionized setting and are derived from the Labor-Management Reporting and Disclosure Act, the Labor-Management Relations Act, or other Federal labor statutes enforced by the Department of Labor. The proposed list also includes some rights covered by the NLRA such as ''the right to sign or refuse to sign an authorization card,'' ''the right to discuss the advantages and disadvantages of union representation or membership with the employer,'' and ''the right to receive information from the employer regarding the advantages and disadvantages of union representation.''

The Board has determined that the inclusion of these additional items is unnecessary. As discussed above, the NLRA itself contains only a general statement that employees have the right not to participate in union and/or other protected concerted activities. Section 19 does specifically set forth the right of certain religious objectors to pay the equivalent of union dues to a tax-exempt charity; however, this right is implicated only when an employer and union have entered into a union-security arrangement. Because the notice does not mention or explain such arrangements, the Board finds no reason to list this narrow exception to union-security requirements. In sum, the Board is not persuaded that the notice needs to expand further on the right to refrain by including a list of specific ways in which employees can elect not to participate or opt out of paying union dues. Employees who desire more information regarding the right not to participate can contact the Board.

The Board does not believe that further explication of this point is necessary. However, because so many comments argue that the notice should include the right to decertify a union and rights under *Communication Workers* v. *Beck*, the Board has decided to explain specifically why it disagrees with each contention.

Concerning the right to decertify, the notice states that employees have the right not to engage in union activity, ''including joining or remaining a member of a union.'' Moreover, the notice does not mention the right to seek Board certification of a union. Indeed, contrary to the numerous comments suggesting that the proposed notice is a ''roadmap'' for union organizing, the notice does not even mention the right to petition for a union representation election, possibly leading to union certification; rather, it merely states that employees have the right to ''organize a union'' and ''form, join or assist a union.'' The notice does not give any further instructions on how an employee can exercise those rights. Similarly, the notice states that employees may choose not to remain a member of a union without further instructions on how to exercise that right. To include instructions for exercising one right and not the other would upset the balanced recitation of rights. If employees have questions concerning how they can exercise their rights, the notice encourages them to contact the Board.

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[107] NLRA Section 19 provides that ''Any employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment; except that such employee may be required in a contract between such employee's employer and a labor organization in lieu of periodic dues and initiation fees, to pay sums equal to such dues and initiation fees to a nonreligious, nonlabor organization charitable fund exempt from taxation[.]'' 29 U.S.C. 169.

The Board has also determined that the addition of *Beck* rights in the final notice is unnecessary. Those rights apply only to employees who are represented by unions under collective-bargaining agreements containing union-security provisions. As stated in the NPRM, unions that seek to obligate employees to pay dues and fees under those provisions are required to inform those employees of their *Beck* rights. See *California Saw & Knife Works,* above, 320 NLRB at 233. See 75 FR at 80412–80413. The Board was presented with no evidence during this rulemaking that suggests that unions are not generally complying with their notice obligations. In addition, the Notice of Election, which is posted days before employees vote on whether to be represented by a union, contains an explanation of *Beck* rights. Moreover, as the Board stated in the NPRM, only about 8 percent of all private sector employees are represented by unions, and by no means are all of them subject to union-security clauses. Accordingly, the number of employees to whom *Beck* applies is significantly smaller than the number of employees in the private sector covered by the NLRA. *Id.* at 80413. Indeed, in the ''right-to-work'' states, where union-security clauses are prohibited, no employees are covered by union security clauses, with the possible exception of employees who work in a Federal enclave where state laws do not apply. Accordingly, because *Beck* does not apply to the overwhelming majority of employees in today's private sector workplace, and because unions already are obliged to inform the employees to whom it does apply of their *Beck* rights, the Board is not including *Beck* notification in the final notice.

The Board also disagrees with the comment from Baker & McKenzie contending that an exhaustive list of additional rights should be included in the notice. In addition to the reasons discussed above, the Board finds that it would not be appropriate to include those rights, most of which are rights of union members vis-à-vis their unions. For example, the comment suggests including the ''right for each union member to insist that his/her dues and initiation fees not be increased * * * except by a majority vote by secret ballot * * *,'' the ''right of each employee in a bargaining unit to receive a copy of the collective bargaining agreement,'' and the ''right to nominate candidates, to vote in elections of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon business properly before the meeting.'' Those rights are not found in the NLRA, but instead arise from other Federal labor laws not administered by the NLRB. See Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401 et seq (LMRDA). The Board finds that it would be inappropriate to include those additional rights in a notice informing employees of their rights under the NLRA.

vi. Other Comments

The Board has also considered, but rejected, the contention that the notice contain simply a ''short and plain'' description of rights such as that used in remedial notices. See *Ishikawa Gasket America, Inc.,* above. The two notices have different purposes: one looks back; the other, forward. As explained in the NPRM, the principal purpose of a remedial notice is to inform employees of unlawful conduct that has taken place and what is being done to remedy that conduct. Accordingly, although a remedial notice contains only a brief summary of NLRA rights, it also contains examples of unlawful actions that have been committed. To the extent that such a notice generally increases employees' awareness of their rights, the unlawful conduct detailed adds to that awareness. The proposed notice, by contrast, is a notice intended to make employees aware of their NLRA rights generally. It normally will not be posted against a background of already-committed unfair labor practices; it therefore needs to contain a summary both of NLRA rights and examples of unlawful conduct in order to inform employees effectively of the extent of their NLRA rights and of the availability of remedies for violations of those rights. Moreover, as the Board explained in the NPRM, the general notice of rights posted in the pre-election notice is sufficient because at least one union along with the employer is on the scene to enlighten employees of their rights under the NLRA. 75 FR 80412 fn.19.

The fundamental rights described in the notice are well established and have been unchanged for much of the Board's history. Accordingly, the Board does not share the concern expressed in some comments that a new notice will have to be posted each time the composition of the Board changes.

Finally, the Board rejects the contention that the notice should address certain rights of employers. The notice is intended to inform employees of their rights, not those of their employers.

For all the foregoing reasons, the Board finds it unnecessary to modify the section of the notice summarizing employees' NLRA rights.

c. The Examples of Unlawful Employer Conduct in the Notice

The proposed notice contained the following examples of unlawful conduct:

Under the NLRA, it is illegal for your employer to:

> Prohibit you from soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms.
>
> Question you about your union support or activities in a manner that discourages you from engaging in that activity.
>
> Fire, demote, or transfer you, or reduce your hours or change your shift, or otherwise take adverse action against you, or threaten to take any of these actions, because you join or support a union, or because you engage in concerted activity for mutual aid and protection, or because you choose not to engage in any such activity.
>
> Threaten to close your workplace if workers choose a union to represent them.
>
> Promise or grant promotions, pay raises, or other benefits to discourage or encourage union support.
>
> Prohibit you from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances.
>
> Spy on or videotape peaceful union activities and gatherings or pretend to do so.
>
> 75 FR 80419.

The Board received limited comments on six of the seven examples of unlawful employer conduct. As a general matter, some comments contend that the number of examples of employer misconduct is disproportionate compared to the examples of union misconduct.[108] Most of the comments refer to the number of paragraphs devoted to illegal employer conduct (7) and the number of paragraphs devoted to illegal union conduct (5). Several comments indicate that when one compares the employer misconduct listed in Section 8(a) of the NLRA with union misconduct listed in Section 8(b), no such imbalance appears in the text of the statute. Several comments provide additional examples of union misconduct that they say should be included.

As with the notice's statement of affirmative rights, some of the individual provisions in this section of the notice received numerous comments and suggestions for improvement. The vast majority of the comments about the specific provisions are from representatives of employers. Those comments generally contend that the provisions are overgeneralizations and do not articulate the legal standard for evaluating allegations of unlawful conduct or indicate factual scenarios in which certain employer conduct may be lawful.

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[108] *See, e.g.,* comments of COLLE, Baker & McKenzie, National Association of Manufacturers, and American Trucking Association.

After reviewing all of the comments, the Board has decided to revise one of the examples of unlawful employer conduct contained in the NPRM. The Board concludes that the other provisions, as proposed, are accurate and informative and, as with the notice as a whole, strike an appropriate balance between being simultaneously instructive and succinct.

Furthermore, the Board sees no reason to add or subtract from the employer or union illegal activity to make the two sections contain an equal number of paragraphs. The comment that argues that no imbalance exists in the statute is correct, but the majority of violations under Section 8(b) concern union conduct *vis-à-vis* employers, not conduct that impairs employees' rights. The notice of rights is intended to summarize employer and union violations against employees; accordingly, there is no need to alter the list to include unlawful union activity against employers.

i. No-Solicitation and No-Distribution Rules

The Board received a few comments that were critical of the proposed notice language stating that an employer cannot lawfully prohibit employees from ''soliciting for the union during non-work time or distributing union literature during non-work time, in non-work areas.'' The Service Employees International Union comments that ''solicitation'' has a narrow meaning and involves asking someone to join the union by signing an authorization card, which is subject to the restrictions suggested in the notice. The comment submits that the notice should state that an employer cannot prohibit employees from ''talking'' about a union. The comment suggests that ''talking'' is both more accurate and is easier for employees to understand than ''soliciting.''

The remaining comments criticize the provision for failing to note any limitations on employees' rights to solicit and distribute, such as the limited rights of off-duty employees, and limitations in retail and health care establishments. One comment, in particular, suggests the notice should advise healthcare employees that they do not enjoy a protected right to solicit in immediate patient care areas or where their activity might disturb patients. See *Beth Israel Hosp.* v. *NLRB,* 437 U.S. 483 (1978). The comment proposes to include a qualification that a hospital or other health care employer may prohibit all solicitation in immediate patient care areas or outside those areas when necessary to avoid disrupting health care operations or disturbing patients. Another comment suggests that the law in this area is so complex that no meaningful but succinct provision can be constructed, and therefore recommends deleting it entirely.

The Board disagrees with those comments. The Board appreciates that under case law, employees' right to engage in solicitation and distribution of literature is qualified in certain settings and accordingly that employers may, in some situations, legally prohibit solicitation or distribution of literature even during employees' nonworking time. Given the variety of circumstances in which the right to solicit and distribute may be limited, however, the Board has determined that limitations on the size and format of the notice preclude the inclusion of factual situations in which an employer may lawfully limit such activity. As stated above, employees may contact the NLRB with specific questions about the lawfulness of their employers' rules governing solicitation and literature distribution.

Turning to the suggestion that the notice should be modified to remove the reference to union solicitation in favor of a reference only to the right to engage in union talk, the Board agrees in part. The Board distinguishes between soliciting for a union, which generally means encouraging a co-worker to participate in supporting a union, and union talk, which generally refers to discussions about the advantages and disadvantages of unionization. *Scripps Memorial Hosp.,* 347 NLRB 52 (2006). The right to talk about terms and conditions of employment, which would necessarily include union talk, is encompassed more specifically by the ''discussion'' provision in the affirmative rights section of the notice. That provision indicates that employees have the right to ''discuss your terms and conditions of employment or union organizing with your co-workers or a union.'' In order to maintain consistency and clarity throughout the notice, the Board agrees that some change is necessary to the solicitation provision. Accordingly, the final notice will state that it is illegal for an employer to ''prohibit you from talking about or soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms.''

ii. Questioning Employees About Union Activity

The Board received one comment concerning this provision, suggesting that it was confusing. The Board believes the existing language is sufficiently clear.

iii. Taking Adverse Action Against Employees for Engaging in Union-Related Activity

The Board did not receive any specific comments regarding this provision.

iv. Threats To Close

A few comments from employer groups criticize the perceived overgeneralization of this provision. Those comments note that, as with unlawful interrogation, a threat to close is evaluated under a totality of circumstances, and that an employer is permitted to state the effects of unionization on the company so long as the statement is based on demonstrably probable consequences of unionization.

The Board agrees that the law in this general area is complex and that predictions of plant closure based on demonstrably probable consequences of unionization may be lawful. *NLRB* v. *Gissel Packing Co.,* 395 U.S. 575, 618 (1969). However, the example in the proposed notice is not such a prediction; rather, the notice states that it is unlawful for an employer to ''threaten to close your workplace if workers choose a union to represent them.'' Such a statement, which clearly indicates that the employer will close the plant in retaliation against the employees for choosing union representation, is unlawful. *Id.* at 618–619. Thus, the Board finds it unnecessary to modify or delete this provision of the notice.

v. Promising Benefits

The Board received one comment addressing this provision. The comment argues that the provision is ''troubling'' because it may be interpreted by a reader to mean ''anytime their employer seeks to make such improvements it discourages union support because improved wages and benefits may reduce employee's interest in a union.'' The Board does not think such an interpretation would be reasonable, because it is contrary to the plain language of the notice. The notice states that promises or grants of benefits "to discourage or encourage union support" are unlawful. It would make little sense to use such language if the Board had meant that any promises or grants of benefits were unlawful, rather than only those with the unlawful stated purposes. And stating that such promises or grants to * * * encourage union support are unlawful necessarily implies that not all promises and grants of benefits discourage union support.

vi. Prohibitions on Union Insignia

A few comments suggest that the provision fails to illuminate the conditions under which "special circumstances" may exist, including in hotels or retail establishments where the insignia may interfere with the employer's public image, or when the insignia is profane or vulgar. Another comment indicates that the provision is overly broad because it does not reflect that a violation depends on the work environment and the content of the insignia. All the comments addressing this provision suggest either adding more detail to the provision to narrow its meaning, or striking the provision entirely.

Again, the Board disagrees. Employees have a statutorily protected right to wear union insignia unless the employer is able to demonstrate "special circumstances" that justify a prohibition. *Republic Aviation Corp.* v. *NLRB,* 324 U.S. 793 (1945). For reasons of format, the notice cannot accommodate those comments suggesting that this provision specify cases in which the Board has found "special circumstances," such as where insignia might interfere with production or safety; where it conveys a message that is obscene or disparages a company's product or service; where it interferes with an employer's attempts to have its employees project a specific image to customers; where it hinders production; where it causes disciplinary problems in the plant; where it is in an immediate patient care areas; or where it would have any other consequences that would constitute special circumstances under settled precedent. *NLRB* v. *Mead Corp.,* 73 F.3d 74, 79 (6th Cir. 1996), enfg. *Escanaba Paper Co.,* 314 NLRB 732 (1994).

Given the lengthy list of potential special circumstances, the addition of one or two examples of special circumstances might mislead or confuse employees into thinking that the right to wear union insignia in all other circumstances was absolute. And including an entire list of special circumstances, concerning both the wearing of union insignia and other matters (*e.g.,* striking and picketing, soliciting and distributing union literature), would make it impossible to summarize NLRA rights on an 11x17 inch poster. In any event, the Board finds that the general caveat that special circumstances may defeat the application of the general rule, coupled with the advice to employees to contact the NLRB with specific questions about particular issues, achieves the balance required for an employee notice of rights about wearing union insignia in the workplace.

vii. Spying or Videotaping

Aside from the few comments that suggest the provision be stricken, only one comment specifically addresses the content of this provision. The comment states that the language is confusing because a "supervisor might believe it would be permissible to photograph or tape record a union meeting. Another might say that their video camera doesn't use tape so it's okay to use." The Board has determined that no change is necessary. In the Board's view, it is unlikely that a reasonable supervisor would construe this notice language (which also says that it is unlawful to "spy on" employees' peaceful union activities) as indicating that it is unlawful to videotape, but lawful to tape record or photograph, such activities. Supervisors are free to contact the Board if they are unsure whether a contemplated response to union activity might be unlawful.

viii. Other Suggested Additions to Illegal Employer Conduct

The Heritage Foundation suggests that the Board add language to the notice informing employees that if they choose to be represented by a union, their employer may not give them raises or bonuses for good performance without first bargaining with the union. The comment suggests that the Board add the following provision "if a union represents you and your co-workers, give you a pay raise or a bonus, or reduce or dock your pay, without negotiating with the union." The Board rejects this suggestion for the same reason it rejects other comments contending that the notice should include the consequences of unionization in the summary of NLRA rights, above.

The National Immigration Law Center suggests that the Board add the following to the notice poster:

> Under the NLRA, it is illegal for your employer to: Report you or threaten to report you to Immigration and Customs Enforcement (ICE) or to other law enforcement authorities in order to intimidate or retaliate against you because you join or support a union, or because you engage in concerted activity for mutual aid and protection.

The Board finds it unnecessary to add this statement. The notice states that it is unlawful for an employer to "fire, demote, or transfer you, or reduce your hours or change your shift, or *otherwise take adverse action against you, or threaten to take any of these actions,* because you join or support a union, or because you engage in concerted activity for mutual aid and protection (emphasis added) [.]" Reporting or threatening to report an employee in the manner described in the comment would be a form of adverse action or threat thereof, and the Board believes that it would be understood as such.

d. Examples of Illegal Union Activity

The proposed notice contained the following examples of unlawful union conduct:

Under the NLRA, it is illegal for a union or for the union that represents you in bargaining with your employer to:

> Threaten you that you will lose your job unless you support the union.
>
> Refuse to process a grievance because you have criticized union officials or because you are not a member of the union.
>
> Use or maintain discriminatory standards or procedures in making job referrals from a hiring hall.
>
> Cause or attempt to cause an employer to discriminate against you because of your union-related activity.
>
> Take other adverse action against you based on whether you have joined or support the union.

75 FR 80419.

There were only a few comments addressing specific changes to the language in this section of the notice. ALFA criticizes the provision that states that a union may not "threaten you that you will lose your job unless you support the union," because the proposed language "fails to capture Section 8(b)(1)(A)'s broader prohibition against restraint and coercion." The comment suggests revising the language to state that a union may not "[r]estrain or coerce you in the exercise of your right to refrain from joining a union by threatening to inflict bodily harm or following you to your home and refusing to leave unless you sign a union card." That comment also suggests adding a provision stating that it is unlawful for a union to "promise to waive your union initiation fee if you agree to sign a union card before a vote is taken."

Another comment argues that the illegal union conduct portion of the notice fails to fully inform employees of their rights as union members.[109] In contrast, another comment states a different position—that the list of illegal union conduct ''ostensibly relates only to restraint or coercion by a union in a unionized environment.'' [110] The comment further states that the Board should have included examples of ''union restraint or coercion in an organizing setting'' but gives no specific examples.

ALFA suggests three changes to the unlawful union activity section. First, rather than say that the union may not ''threaten you that you will lose your job,'' a more comprehensive statement would be ''threaten, harass, or coerce you in order to gain your support for the union.'' The Board agrees, except as regards ''harass,'' which is sometimes used to characterize almost any sort of union solicitation. Accordingly, the statement will be modified to read ''threaten or coerce you in order to gain your support for the union.'' Second, the comment suggests changing ''cause or attempt to cause an employer to discriminate against you'' to ''discriminate or attempt to discriminate against you because you don't support a union.'' The Board disagrees, because the suggested change would shift the focus of the provision away from the sort of conduct contemplated in the rule. *See* NLRA Section 8(b)(2), 29 U.S.C. 158(b)(2). Third, the comment suggests changing ''take other adverse action against you based on whether you have joined or support the union'' to ''take adverse action against you because you have not joined or do not support the union.'' The Board agrees and will modify this provision of the notice accordingly.

Baker & McKenzie urges that a variety of other examples of unlawful union conduct be added to the notice, including requiring nonmembers to pay a fee to receive contract benefits, disciplining members for engaging in activity adverse to a union-represented grievant, disciplining members for refusing to engage in unprotected activity, engaging in careless grievance handling, failing to notify employees of their *Beck* rights, requiring employees to agree to dues checkoff instead of direct payment, discriminatorily applying hiring hall rules, and conditioning continued employment on the payment of a fine or dues in ''right-to-work'' states.

As with the examples of unlawful employer activity, the Board concludes that the provisions concerning unlawful union activity, as proposed, are accurate and informative, and, as with the notice as a whole, strike an appropriate balance between being simultaneously instructive and succinct. Moreover, the Board finds it unnecessary to include additional examples of unlawful conduct so that the lists of employer and union activity are the same length because the notice describes the central forms of unlawful conduct engaged in by each type of entity. Still less is it necessary to add a host of additional examples of unlawful union conduct, with the result that the list of such conduct would be much longer than the list of unlawful employer conduct. In the Board's view, the list of unlawful union conduct in the proposed notice fairly informs employees of the types of conduct that a union is prohibited from engaging in without providing unnecessary or confusing examples. Employees may contact the NLRB if they believe a union has violated the NLRA.

e. Collective-Bargaining Provision

The collective-bargaining provision of the NPRM states that ''if you and your co-workers select a union to act as your collective bargaining representatives, your employer and the union are required to bargain in good faith and in a genuine effort to reach a written, binding agreement setting your terms and conditions of employment. The union is required to fairly represent you in bargaining and enforcing the agreement.'' 75 FR 80419.

The Board received only a few comments on this provision of the notice. Notably, COLLE requests the inclusion of a limitation on the provision that employees have the right to bargain collectively, in order to clarify that the employer's obligation is only to bargain in good faith and not necessarily to reach an agreement. A second comment suggests that the notice inform employees that they have the right to ''sue a union for unfairly representing the employee in bargaining, contract administration, or a discrimination matter.''

The Board has decided that no changes are necessary to the duty to bargain paragraph. The Board is satisfied that the proposed collective-bargaining provision provides sufficient guidance to employees about the exercise of these rights while still staying within the constraints set by a necessarily brief employee notice. As to the first comment, the notice states that an employer and union have a duty to ''bargain in good faith and in a genuine effort to reach a written, binding agreement.'' As discussed above, by referring to a ''genuine effort'' to reach agreement, the notice necessarily implies that the parties are not obliged to actually reach one. The duty to bargain in good faith has many components. *See NLRB* v. *Katz,* 369 U.S. 736 (1962). And the suggestion that employers do not have to agree to certain proposals, although correct, does not account for the line of cases that suggest that an important ingredient in good faith bargaining is a willingness to compromise. *See Phelps Dodge,* 337 NLRB 455 (2002).

Turning to the suggestion that the notice include language informing employees of their right to ''sue'' the union if it fails to represent them fairly, the Board has concluded that the notice sufficiently apprises employees of their right to fair representation and of their right to file unfair labor practice charges with the Board should a union fail to fulfill that duty. The rights that employees have to sue unions directly in court without coming to the Board are beyond the scope of this rulemaking.

f. Coverage Provision

In regard to coverage under the NLRA, the proposed notice states:

> The National Labor Relations Act covers most private-sector employers. Excluded from coverage under the NLRA are public-sector employees, agricultural and domestic workers, independent contractors, workers employed by a parent or spouse, employees of air and rail carriers covered by the Railway Labor Act, and supervisors (although supervisors that have been discriminated against for refusing to violate the NLRA may be covered). 75 FR 80419.

A comment from the National Immigration Law Center suggests adding the following language: ''The NLRA protects the above-enumerated rights of all employees, irrespective of their immigration status. That protection extends to employees without work authorization, though certain remedies in those circumstances may be limited. Employers cannot threaten you or intimidate you on the basis of you immigration status to prevent you from joining or supporting a union, or engaging in concerted activity for mutual aid and protection.''

The Board has decided not to amend the coverage provision in the final notice. Although the Board understands that many immigrant employees may be unsure whether they are covered by the NLRA, the notice does not include a list of covered employees. Including specific coverage of immigrants, but not other classes of employees, may cause confusion for many employees. Currently, the language in the notice tracks statutory language and provides only the list of employees excluded from coverage. As a result, those employees not listed under the exclusions will reasonably believe they are covered employees under the statute. Any employees who are unsure of their status should contact a regional office of the NLRB.

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[109] *See* comment of National Association of Manufacturers.

[110] *See* comment of ALFA.

The final notice as modified is set forth in the Appendix to Subpart A of this rule.

2. Posting Issues

The Board proposed that the notice to employees shall be at least 11 inches by 17 inches in size, and in such colors and type size and style as the Board shall prescribe. The proposed rule further provides that employers that choose to print the notice after downloading it from the Board's Web site must print in color, and the printed notice shall be at least 11 inches by 17 inches in size.

Proposed § 104.202(d) requires all covered employers to post the employee notice physically ''in conspicuous places, including all places where notices to employees are customarily posted.'' Employers must take steps to ensure that the notice is not altered, defaced, or covered with other material. Proposed § 104.202(e) states that the Board will print the notice poster and provide copies to employers on request. It also states that employers may download copies of the poster from the Board's Web site, *http://www.nlrb.gov,* for their use. It further provides that employers may reproduce exact duplicates of the poster supplied by the Board, and that they may also use commercial poster services to provide the employee notice consolidated onto one poster with other Federally mandated labor and employment notices, as long as consolidation does not alter the size, color, or content of the poster provided by the Board. Finally, employers that have significant numbers of employees who are not proficient in English will be required to post notices of employee rights in the language or languages spoken by significant numbers of those employees. The Board will make available posters containing the necessary translations.

In addition to requiring physical posting of paper notices, proposed § 104.202(f) requires that notices be distributed electronically, such as by e-mail, posting on an intranet or an internet site, and/or other electronic means, if the employer customarily communicates with its employees by such means.[111] An employer that customarily posts notices to its employees on an intranet or internet site must display the required employee notice on such a site prominently—*i.e.,* no less prominently than other notices to employees. The Board proposed to give employers two options to satisfy this requirement. An employer may either download the notice itself and post it in the manner described above, or post, in the same manner, a link to the Board's Web site that contains the full text of the required employee notice. In the latter case, the proposed rule states that the link must contain the prescribed introductory language from the poster, which appears in Appendix to Subpart A, below. An employer that customarily communicates with its employees by e-mail will satisfy the electronic posting requirement by sending its employees an e-mail message containing the link described above.

The proposed rule provides that, where a significant number of an employer's employees are not proficient in English, the employer must provide the required electronic notice in the language the employees speak. This requirement can be met either by downloading and posting, as required in § 104.202(f), the translated version of the notice supplied by the Board, or by prominently displaying, as required in § 104.202(f), a link to the Board's Web site that contains the full text of the poster in the language the employees speak. The Board will provide translations of that link. 75 FR 80417.

Section 104.203 of the proposed rule provides that Federal contractors may comply with the requirements of the rule by posting the notices to employees required under the Department of Labor's notice-posting rule, 29 CFR part 471. *Id.*

The Board solicited comments on its proposed requirements for both physical and electronic notice posting. In addition, the Board solicited comments on whether it should prescribe standards regarding the size, clarity, location, and brightness of the electronic link, including how to prescribe electronic postings that are at least as large, clear, and conspicuous as the employer's other postings.

The Board received numerous comments concerning the technical requirements for posting the notices of employee rights. Those comments address the locations where notices would be physically posted, physical characteristics of the posters, requirements for posting in languages other than English, details of the requirement for electronic posting of notices by employers that customarily communicate with their employees electronically, and ''safe harbor'' provisions for Federal contractors that are already posting the Department of Labor's notice of NLRA rights.

a. Location of Posting

Section 104.202(d) of the proposed rule requires that the notice be posted ''in conspicuous places, including all places where notices to employees are customarily posted.'' Some employers and their representatives, including law firm Baker & McKenzie, comment that the proposed rule does not define ''customarily.'' The Board responds that the term is used in its normal meaning of ''ordinarily'' or ''usually,'' as it has been used in the Board's remedial orders for decades.[112] This standard is consistent with the posting requirements in the regulations and statutes of other agencies.[113] Baker & McKenzie's comment contends that the quoted phrase should read instead ''where other legally-required notices to employees are customarily posted.'' The Board disagrees. As under the Department of Labor's notice posting requirement,[114] the Board's final rule clarifies that the notice must be posted wherever notices to employees regarding personnel rules and policies are customarily posted and are readily seen by employees, not simply where other legally mandated notices are posted.

A number of comments from employers[115] and individuals take the position that it is time to move away from paper posters and to encourage employees to inform themselves of their rights through the Internet. Many comments object that the posting requirement will add to already cluttered bulletin boards or necessitate additional bulletin boards.[116] The Board responds to these comments above in section II, subsection C, Factual Support for the Rule. The Council of Smaller

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[111] *See J. Picini Flooring,* 356 NLRB No. 9, slip op. at 6 (2010).

[112] *See, e.g., The Golub Corporation,* 159 NLRB 355, 369 (1966).

[113] *See, e.g.,* 29 CFR 1903.2 (Occupational Safety and Health Act); 29 CFR 1601.30 (Title VII of the Civil Rights Act of 1964); 42 U.S.C. 2000e-10(a) (Americans with Disabilities Act); 29 U.S.C. 2619(a) (Family and Medical Leave Act).

[114] 75 FR 28386.

[115] *See, e.g.,* comments of Buffalo Wild Wings; Associated Milk Producers, Inc.; Smitty's, Inc.; National Grocers Association; and Sorensen/Wille, Inc.

[116] *See, e.g.,* comments of Dr. Pepper Snapple Group; Georgia Caremaster Medical Services; Homestead Village, Inc.; Exodus Designs & Surfaces; Bonnie Dedmore State Farm.

Enterprises further maintains that the requirement to ensure that the notice is conspicuous and not altered or defaced imposes an unnecessary burden on employers. Caremaster Medical Services' comment asks whether periodic inspections of the notices will be conducted and, if so, by whom. Specifically, this comment expresses concern that employers will be forced to permit union officials to enter their facilities to inspect the notices. The rule does not provide for such inspections or alter current standards regarding union access to employers' premises. Rather, the Board contemplates that an employer's failure to comply with the rule will be brought to the attention of the employer or the Board by employees or union representatives who are lawfully on the premises.

The International Union of Operating Engineers comments that the rule needs to apply to the marine construction industry, in which employees work at remote sites and do not necessarily see a posting in the office. Another comment similarly states that the rule is not practical for small employers with dispersed employees, *e.g.,* trucking or insurance companies.[117] Similarly, one comment contends that the requirement is burdensome for construction employers, whose employees report to various worksites.[118] The Board recognizes that certain work situations, such as those mentioned in the comments, present special challenges with regard to physical posting. However, the Board concludes that these employers must nonetheless post the required notice at their work premises in accordance with the proposed rule. Electronic posting will also aid the employers in providing the notice to their employees in the manner in which they customarily communicate with them.

TLC Companies contends that professional employer organizations (PEOs) such as itself should be exempt from the rule's requirements. It explains that PEOs are ''co-employers'' of a client employer's employees, providing payroll and other administrative services. However, it asserts that PEOs have no control over the client employer's worksite. Accordingly, TLC Companies is concerned that a PEO could be found liable for its client's failure to post the notice. The Board contemplates that employers will be required to physically post a notice only on their own premises or at worksites where the employer has the ability to post a notice or cause a notice to be posted directed to its own employees.

Retail Industry Leaders Association asks whether the rule would apply to overseas employees of American employers. The answer to that question is generally ''no''; the Board's jurisdiction does not extend to American employees engaged in permanent employment abroad in locations over which the United States has no legislative control. *See Computer Sciences Raytheon,* 318 NLRB 966 (1995). Employers of employees who are working abroad only temporarily are not required to post the notice in foreign workplaces.

b. Size and Form Requirements

Many comments from organizations and individuals object to the 11x17-inch size prescribed by the proposed rule.[119] They argue that most employers do not have the capacity to make 11x17-inch color copies and will have to use commercial copy services, which some contend are expensive. A human resources official also asserts that other required notices are smaller, and that the larger poster will be more eye-catching, implying that NLRA rights are more important. Other comments support the proposed 11x17-inch size, stating that the notice should stand out and be in large print, with one comment specifying that the title should be larger.[120] The AFL–CIO argues that employers should not be permitted to download the notice from the Board's Web site if their limited printing capacity would make it less eye-catching.

A few comments contend that the prescribed size will make it difficult to include in consolidated posters of various statutory rights, as the proposed rule permits.[121] One comment urges the Board to follow the ''3′ rule,'' according to which a notice is large enough if it can be read from a distance of 3 feet,[122] and another suggests only a legibility requirement.[123] One comment states that minor deviations, such as ¼ inch, should not be deemed violations.[124] Another comment expresses a concern that a large, prominent poster could cause a few unhappy employees to begin activity that could result in divisiveness in a small facility.[125]

The Board has decided to retain the 11x17-inch poster size. As the NPRM states, the Board will furnish paper copies of the notice, at no charge, to employers that ask for them. Employers that prefer to download and print the notice from the Board's Web site will have two formats available: a one-page 11x17-inch version and a two-page 8 ½x11-inch version, which must be printed in landscape format and taped together to form the 11x17-inch poster. In response to the comments objecting to the added expense of obtaining color copies through outside sources, the Board has revised the rule to delete the requirement that reproductions of the notice be in color, provided that the reproductions otherwise conform to the Board-provided notice. Accordingly, the Board concludes that obtaining copies of the notice will not be difficult or expensive for employers.

The Board finds no merit to the other objections to the 11x17-inch poster size. Contrary to some comments, the Board does not believe that employees would think that NLRA rights are more important than other statutory rights, merely because the notice of NLRA rights is somewhat larger than notices prescribed under some other statutes. It would seem that, upon learning of all of their rights in the workplace, employees will determine from their understanding of the rights themselves, rather than the size of the various posters, which rights (if any) are more important to them than others. In the Board's view, adopting a subjective ''3′ rule'' or a ''legibility standard'' could lead to disagreements over whether a particular poster was ''legible'' or could be read at a distance of 3 feet. In addition, if, as some comments contend (without citing specifics), the size of the Board's notice will pose a problem for manufacturers of consolidated posters to include it with posters detailing other workplace rights, that would seem to be a problem best left to those manufacturers to solve.

c. Language Issues

The proposed rule requires that, ''[w]here a significant portion of an employer's workforce is not proficient in English, the employer must provide the notice in the language the employees speak.'' This is the same standard applied in the Department of Labor's notice of NLRA rights for federal contractors (29 CFR 471.2(d)) and in the notice required under the Family and Medical Leave Act (29 CFR 825.300(4)). Many comments support the requirement and availability of translated notices, particularly as an essential way of informing immigrant employees about their rights.[126] But several comments complain that the rule does not define ''significant.''[127] Baker & McKenzie proposes that the standard be 40 percent specifically of the employer's production and maintenance workforce, while the National Immigration Law Center proposes a 5 percent standard. Another comment urges that translated notices be required whenever any of the employees are not proficient in English.[128] The U.S. Chamber of Commerce asserts that a safe harbor is needed for employers when a notice in a particular language is not yet available from the Board. Moreover, a few comments contend that the Board should also provide Braille notices for vision-impaired employees, as well as audio versions for illiterate employees, and versions of the notice that are adaptable to assistive technologies.[129] One individual proposes that the rule mandate that employers read the notice to employees when they are hired and to all employees annually.

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[117] Comment of TLC Companies.

[118] Comment of NAI Electrical Contractors.

[119] *See, e.g.,* comment of Associated General Contractors (AGC) of Iowa.

[120] *See, e.g.,* comments of AFL–CIO and three Georgetown University Law Center students.

[121] *See, e.g.,* comment of Sinnissippi Centers.

[122] AGC of Iowa.

[123] Sinnissippi Centers.

[124] National Council of Agricultural Employers.

[125] Mercy Center Nursing Unit Inc.

Having carefully considered the comments, the Board has decided to define ''significant'' in terms of foreign-language speakers as 20 percent or more of an employer's workforce. Thus, if as many as 20 percent of an employer's employees are not proficient in English but speak the same foreign language, the employer must post the notice in that language, both physically and electronically (if the employer is otherwise required to post the notice electronically). If an employer's workforce includes two or more groups constituting at least 20 percent of the workforce who speak different languages, the employer must either physically post the notice in each of those languages or, at the employer's option, post the notice in the language spoken by the largest group of employees and provide each employee in each of the other language groups a copy of the notice in the appropriate language. If such an employer is also required to post the notice electronically, it must do so in each of those languages. If some of an employer's employees speak a language not spoken by employees constituting at least 20 percent of the employer's workforce, the employer is encouraged, but not required, either to provide the notice to those employees in their respective language or languages or to direct them to the Board's Web site, *http://www.nlrb.gov,* where they can obtain copies of the notice in their respective languages. The Board has also decided to add to the notice instructions for obtaining foreign-language translations of the notice.

Employers will be required to request foreign-language notices from the Board or obtain them from the Board's Web site in the same manner as the English-language notice. If an employer requests from the Board a notice in a particular language in which the notice is not available, the requesting employer will not be liable for non-compliance with the rule until the notice becomes available in that language.

With respect to employees who are vision-impaired or those who are illiterate, employers may consult the Board's Regional Office on a case-by-case basis for guidance on appropriate methods of providing the required notice, including by audio recording.

d. Electronic Posting

Many employer comments oppose the requirement for electronic notice. The Coalition for a Democratic Workplace points out that other agencies do not require both electronic and physical posting and asserts that only one method is necessary. For example, the Coalition notes that the Family and Medical Leave Act notice obligation is satisfied by electronic posting alone, and other statutes do not mention electronic posting. The National Council of Agricultural Employers urges the Board to require electronic posting only if the employer posts other statutory or regulatory notices in that fashion. Another proposes that employers be permitted to choose either physical or electronic posting. The National Association of Manufacturers remarks that the proposed rule breaks new ground for using an employer's email system to communicate information about ''union membership.'' The U.S. Chamber of Commerce suggests that this aspect of the rule would chill employers' use of new technologies. On the other hand, the AFL–CIO and several other commenters[130] support electronic as well as physical posting; the Center for American Progress Action Fund, among others, points out that electronic communications at work are standard now.

After carefully considering these comments, the Board concludes that electronic posting will substantially assist in providing the prescribed notice to employees. As some comments state, electronic communication is now a routine practice in many workplaces and the source of much information from employers to their employees. However, the Board has clarified the final rule to mandate only that, if an employer customarily communicates personnel rules or policies to its employees in that manner, it must also do so with respect to the notice of employee rights under the NLRA. The concern that the rule will discourage employers from using new technologies is apparently not widely shared and, in the Board's view, is implausible. Although the Board recognizes that some other statutes and regulations do not require electronic notice, it notes that they generally predated the routine use of electronic communications in the workplace. Having only recently begun ordering electronic posting of remedial notices,[131] the Board has limited experience in this area, and employers are encouraged to contact the local Regional Office with questions about this provision. The Board does not agree that employers should be permitted to choose whether to provide physical or electronic notice, because some employers could select the less effective of these alternatives, thus undermining the purpose of the rule. Finally, the rights stated in the notice are not accurately described as pertaining solely to union membership, and the notice is not intended to promote union membership or union representation. Rather, the notice addresses a broad range of employee legal rights under the NLRA, which involve protected concerted activity as well as union activity in both organized and unorganized workplaces, and also the right to refrain from any such activity.

Many employer comments note that the proposed rule also does not define ''customarily'' as it pertains to electronic posting in § 104.202(f), *i.e.,* the type and degree of communication that triggers the requirement.[132] Numerous employers also participated in a postcard campaign objecting, among other things, that employers use a wide variety of technology to communicate with employees and that the rule could require them to use all methods to convey the notice.[133] For

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[126] *See, e.g.,* comments of National Immigration Law Center, Legal Aid Society—Employment Law Center, and La Raza Centro Legal; Filipino Advocates for Justice.

[127] *See, e.g.,* comments of COLLE; Food Marketing Institute (FMI).

[128] Georgetown law students.

[129] *See, e.g.,* Baker & McKenzie; Heritage Foundation; Georgetown law students.

[130] *See, e.g.,* comments of Gibson, Dunn, Cohen, Leifer & Yellig, P.C.; Beeson, Tayer & Bodine.

[131] *J. Picini Flooring,* 356 NLRB No. 9 (2010).

[132] *See, e.g.,* comments of International Foodservice Distributors Association (IFDA); Associated Builders and Contractors; Los Angeles County Business Federation; National Roofing Contractors Association.

[133] *See, e.g.,* comments of American Home Furnishings Alliance; Seawright Custom Precast;

Continued

example, they ask whether an employer that occasionally uses text messaging or Twitter to communicate with employees would have to use those technologies and, if so, how they would be able to comply with the rule, in view of the length restrictions of these media. The U.S. Chamber of Commerce raises the same issue regarding faxing, voice mail, and instant messaging. The National Roofing Contractors Association notes that some employers use email to communicate with certain employees, while other employees have no access to email during their work day. As to email communication itself, an individual observes that many employees change jobs every 3 to 4 years, and an email reaches only those in the workforce at a specific time. The same comment notes that the proposed rule does not state when or how often email notice should be provided. Three Georgetown law students recommend that the rule mandate email as well as intranet notice to employees when it goes into effect and written notice to new employees within a week of their starting employment.

The Board responds that, as discussed above regarding the location of posting, ''customarily'' is used in its normal meaning. This provision of the rule would not apply to an employer that only occasionally uses electronic means to communicate with employees. However, in view of the numerous comments expressing concern over the proposed rule's email posting requirements, the Board has decided not to require employers to provide the notice to employees by means of email and the other forms of electronic communication listed in the previous paragraph. In the Board's judgment, the potential for confusion and the prospect of requiring repeated notifications in order to reach new employees outweigh the benefits that could be derived at the margin from such notifications. All employers subject to the rule will be required to post the notice physically in their facilities; and employers who customarily post notices to employees regarding personnel rules or policies on an internet or intranet site will be required to post the Board's notice on those sites as well. Moreover, those notices (unlike the Board's election and remedial notices) must remain posted; thus, it is reasonable to expect that even though some employees may not see the notices immediately, more and more will see them and learn about their NLRA rights as time goes by. Accordingly, the only electronic postings required under the final rule will be those on internet or intranet sites.

Many comments address the characteristics of electronic posting, as prescribed in § 104.202(f). In the NPRM, the Board proposed not to prescribe the size, clarity, location, or brightness of an electronic notice or link to the notice, but rather require that it be at least as prominent as other electronic notices to employees, as the Department of Labor's rule requires. No comments suggest more specific requirements; the Michigan Health & Hospital Association argues that such requirements would result in inadvertent noncompliance. The Board has decided to adopt the Department of Labor's approach, as proposed in the NPRM.

Baker & McKenzie urges that the title of the link in the proposed rule be changed to ''Employee Rights under the National Labor Relations Act'' rather than ''Important Notice about Employees Rights to Organize and Bargain Collectively with Their Employers.'' The Board agrees and has revised the rule accordingly.

A comment from Vigilant states that a link to the Board's Web site, which is one means of electronic posting, should not be required to include the introductory language of the notice. The Board agrees, noting that the Department of Labor takes this approach, and will not require that electronic links to the Board's Web site include the introductory language.

For the foregoing reasons, the Board has decided to retain the posting requirements as proposed in the NPRM, modified as indicated above.

e. Compliance With the Department of Labor's Rule

Several comments opposing the proposed rule urge that, if the rule becomes final, the Board should retain the ''safe harbor'' provided for Federal contractors that comply with the Department of Labor's notice posting rule.[134] However, the U.S. Chamber of Commerce states that some employers post the Department of Labor's notice at facilities where it is not required or where Federal contract work is performed only sporadically. It questions whether such employers must replace the Department of Labor's notice with the Board's when no contract work is being performed, or whether they can comply with the Board's rule by leaving the Department of Labor's notice in place. The Chamber proposes that employers be allowed to choose to maintain the Department of Labor's notice, although another comment asserts that employees might think that the notice is no longer applicable because of the lack of a current contract. Another comment raises the possibility that either the Board or the Department of Labor could decide to change its notice and emphasized that they need to be identical in order to provide the safe harbor. The Board responds that a Federal contractor that complies with the Department of Labor's notice-posting rule will be deemed in compliance with the Board's requirement.[135]

3. Exceptions

The rule applies only to employers that are subject to the NLRA. Under NLRA Section 2(2), ''employer'' excludes the United States government, any wholly owned government corporation, any Federal Reserve Bank, any State or political subdivision, and any person subject to the Railway Labor Act, 45 U.S.C. 151 *et seq.* 29 U.S.C. 152(2). Thus, under the proposed rule, those excluded entities are not required to post the notice of employee rights. The proposed rule also does not apply to entities that employ only individuals who are not considered ''employees'' under the NLRA. *See* Subpart A, below; 29 U.S.C. 152(3). Finally, the proposed rule does not apply to entities over which the Board has been found not to have jurisdiction, or over which the Board has chosen through regulation or adjudication not to assert jurisdiction.[136] The Board proposed that all employers covered under the NLRA would be subject to the notice posting rule. 75 FR 80413.

The Coalition for a Democratic Workplace argues that the final rule cannot be applied to religiously-affiliated employers. The Coalition argues that assertion of jurisdiction would ''substantially burden [such employers'] exercise of religion in violation of both the First Amendment and the Religious Freedom Restoration Act.'' Similarly, Seyfarth Shaw contends that religiously-affiliated healthcare

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Mount Sterling, Kentucky Chamber of Commerce; U.S. Xpress, Inc.

[134] *See, e.g.*, comments of IFDA; Estes; The Sack Company; National Roofing Contractors Association.

[135] A few comments ask whether the Board's rule would preempt the Department of Labor's rule. Because the answer to that question would not affect the validity of the Board's rule, the Board finds it unnecessary to take a position on that issue in this proceeding.

[136] The proposed rule excludes small businesses whose impact on interstate commerce is de minimis or so slight that they do not meet the Board's discretionary jurisdiction requirements. See generally An Outline of Law and Procedure in Representation Cases, Chapter 1, found on the Board's Web site, *http://www.nlrb.gov*, and cases cited therein.

institutions should be excluded from coverage if they are nonprofit and hold themselves out to the public as being religious.

The Board examines jurisdictional issues on a case-by-case basis, and the Board's jurisdiction jurisprudence is highly complex. The Board has asserted jurisdiction over some religiously-affiliated employers in the past, but has declined to assert jurisdiction over other religiously-affiliated employers. *See, e.g., Ecclesiastical Maintenance Service,* 320 NLRB 70 (1995), and *St. Edmund's High School,* 337 NLRB 1260 (2002). In *Ukiah Valley Medical Center,* the Board found that neither the First Amendment nor the Religious Restoration Act precludes the Board from asserting jurisdiction over a religiously-affiliated employer. 332 NLRB 602 (2000). If an employer is unsure whether the Board has jurisdiction over its operations, it may contact the Board's regional office.

In its comment, the United Stated Postal Service points out that it has different statutory rules from those covering other private sector employees. Labor relations in the Postal Service are governed by Chapter 12 of the Postal Reorganization Act of 1970, 39 U.S.C. 1201 *et seq.* Section 1209(a) of the Postal Reorganization Act generally makes the NLRA applicable to all employee-management relations ''to the extent not inconsistent with the provisions of this title.'' As raised by the comment, there are indeed several areas in which the Postal Reorganization Act is inconsistent with the NLRA. The principal differences are that an agency shop is prohibited (*id.* section 1209(a)) and that postal employees may not strike. *Id.* Section 410(b)(1)(incorporating 5 U.S.C. 7311).

In light of these differences, the Board agrees that a postal worker-specific notice is necessary. The Board, however, does not wish to create a notice without the benefit of specific public comment on this issue. Accordingly, the Board will exclude the United States Postal Service from coverage under the final rule; the Board may, at a later date, request comments on a postal worker-specific notice.

Subpart B—Enforcement and Complaint Procedures

Subpart B of the rule contains procedures for enforcement of the employee notice-posting requirement. In crafting Subpart B, the Board was mindful of the need to identify an effective remedy for noncompliance with the notice-posting requirement. The Board gave careful consideration to several alternative approaches to enforcing the rule's notice-posting requirements. Those alternatives, not all of which are mutually exclusive, were (1) Finding the failure to post the required notices to be an unfair labor practice; (2) tolling the statute of limitations for filing unfair labor practice charges against employers that fail to post the notices; (3) considering the willful failure to post the notices as evidence of unlawful motive in unfair labor practice cases; (4) voluntary compliance. 75 FR 80413–80414.

As explained in the NPRM, the Board considered but tentatively rejected relying solely on voluntary compliance. This option logically would appear to be the least conducive to an effective enforcement of the notice-posting requirement, and the Board's limited experience with voluntary posting of notices of employee rights seems to confirm this. When an election petition is filed, the Board's Regional Office sends the employer Form NLRB–5492, Notice to Employees, together with a leaflet containing significant ''Rights of Employees.'' See the Board's Casehandling Manual, Part Two—Representation Proceedings, Section 11008.5, found on the Board's Web site, *http://www.nlrb.gov.* The Regional Office also asks employers to post the notice of employee rights in the workplace; however, the Board's experience is that the notices are seldom posted. *Id.* at 80414. Moreover, because the notice is voluntary and there is no enforcement scheme, there is no remedy to fix the problem when the notice is not posted. The Board has found nothing in the comments to the NPRM that would give it reason to believe that voluntary compliance would be any more effective under the present notice rule. Therefore, the Board has decided not to rely on voluntary compliance. Instead the final rule provides that failing to post the notice may be found to be an unfair labor practice and may also, in appropriate circumstances, be grounds for tolling the statute of limitations. In addition, a knowing and willful failure to post employee notices may be found to be evidence of unlawful motive in an unfair labor practice case. (As the Board also explained in the NPRM, it did not consider imposing monetary fines for noncompliance, because the Board lacks the statutory authority to impose ''penalties or fines.'' See, *e.g., Republic Steel Corp.* v. *NLRB,* 311 U.S. 7, 10–12 (1940).) These provisions have two purposes: to ensure that any violations of the notice-posting requirement that occur may be remedied where necessary, and to describe how violations of the notice-posting requirement may affect other Board proceedings.[137]

The Board received several hundred comments regarding the proposed means of enforcing the notice posting requirement. Those that favor implementing the rule also favor the proposed enforcement mechanisms.[138] Those opposing the rule generally oppose all three enforcement mechanisms.

A. Noncompliance as an Unfair Labor Practice

The rule requires employers to inform employees of their NLRA rights because the Board believes that employees must know their rights in order to exercise them effectively. Accordingly, the Board may find that an employer that fails or refuses to post the required notice of employee rights violates Section 8(a)(1) of the NLRA, 29 U.S.C. 158(a)(1) by ''interfer[ing] with, restrain[ing], or coerc[ing] employees in the exercise of the rights guaranteed in section 7 (29 U.S.C. 157).''

As it explained in the NPRM, the Board expects that most employers that fail to post the required notice will do so simply because they are unaware of the rule, and that when it is called to their attention, they will comply without the need for formal administrative action or litigation. When that is not the case, the Board's customary procedures for investigating and adjudicating alleged unfair labor practices may be invoked. See NLRA Sections 10 and 11, 29 U.S.C. 160, 161; 29 CFR part 102, subpart B.[139] When the Board finds a violation, it will customarily order the employer to cease and desist and to post the notice of employee rights as well as a remedial notice.[140] 75 FR 80414.

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[137] The tolling and animus provisions are not remedies in the usual sense of the term; however, these provisions inform the public of the impact that violations of the notice posting obligation may have in other NLRB proceedings. As described below, these impacts are not a ''punishment'' for noncompliance. To the contrary, the tolling provision is intended to ensure that noncompliance with the notice posting requirement does not prejudice innocent employees. And the animus provision is intended to inform the public that knowing and willful violations of the rule may support an inference of animus toward NLRA rights.

[138] *See, e.g.,* Harkin and Miller, National Employment Law Project, Public Justice Center, Inc.

[139] The Board's General Counsel has unreviewable discretion as to whether to issue a complaint in an unfair labor practice proceeding. *See, e.g., Vaca* v. *Sipes,* 386 U.S. 171, 182 (1967). The General Counsel has exercised that discretion to refuse to proceed with meritorious charges when it would not serve the purposes of the Act. See General Counsel memoranda 02–08 and 95–15. This discretion includes dismissing any charge filed against an employer that is not covered by the Board's jurisdictional requirements.

The comments opposing this proposal make three principal arguments. First, only Congress, not the Board, has the authority to "create a new unfair labor practice." [141] Second, even if the Board possesses such authority, it has not identified the Section 7 rights that would be interfered with by an employer's failure to post the notice.[142] Third, "interfer[ing] with, restrain[ing], or coerc[ing]" employees within the meaning of NLRA Section 8(a)(1) necessarily involves action, not failure to act; therefore, failure to post the notice cannot violate Section 8(a)(1).[143] The Board finds no merit in any of these contentions.

To begin with, it is incorrect to say that the Board lacks the authority to find that failure to post the notice violates Section 8(a)(1) without Congressional approval. It is true, as the Society for Human Resource Management states, that "Section 10(a) of the Act specifically limits the NLRB's powers to preventing only the unfair labor practices listed in Section 8 of the Act. Section 8 is silent regarding any notice posting requirement (emphasis in original)." However, as the Supreme Court remarked long ago,

> The [NLRA] did not undertake the impossible task of specifying in precise and unmistakable language each incident which would constitute an unfair labor practice. On the contrary that Act left to the Board the work of applying the Act's general prohibitory language in the light of the infinite combinations of events which might be charged as violative of its terms. Thus a "rigid scheme of remedies" is avoided and administrative flexibility within appropriate statutory limitations obtained to accomplish the dominant purpose of the legislation.

Republic Aviation Corporation v. *NLRB,* 324 U.S. 793, 798 (1945) (citation omitted). Accordingly, since its creation, the Board in interpreting Section 8(a)(1) has found numerous actions as to which "Section 8 is silent"—*e.g.,* coercively interrogating employees about their protected concerted activities, engaging in surveillance of employees' union activities, threatening employees with retaliation for engaging in protected activities—to violate Section 8(a)(1) by "interfer[ing] with, restrain[ing], or coerc[ing] employees in the exercise of the rights guaranteed in section 7" of the NLRA. Section 8 is equally silent concerning unions' duty to inform employees of their rights under *NLRB* v. *General Motors,* above, and *Communications Workers* v. *Beck,* above, before attempting to obligate them pursuant to a union-security clause, yet the Board finds that a union's failure to provide that notice restrains and coerces employees in violation of Section 8(b)(1)(A). *California Saw & Knife Works,* above, 320 NLRB at 233, 259, 261.[144]

Because, as described in detail above, notice posting is necessary to ensure effective exercise of Section 7 rights, a refusal to post the required notice is at least an interference with employees' exercise of those rights. For these reasons, in finding that an employer's failure to post the required notice interferes with, restrains, or coerces employees in the exercise of their NLRA rights, in violation of Section 8(a)(1), the Board is acting consistently with its settled practice. Some comments claim that the Board has not identified any specific Section 7 right to justify this remedy. But such specificity is not needed, because all Section 7 rights are implicated by an employer's failure to post the required notice. As previously stated, there is a strong nexus between knowledge of Section 7 rights and their free exercise. It therefore follows that an employer's failure to post this notice, which informs employees of their Section 7 rights, reasonably tends to interfere with the exercise of such rights.

Finally, although most violations of the NLRA involve actions rather than failures to act, there are instances in which a failure to act may be found to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. Thus, a union's failure to provide the required notices under *NLRB* v. *General Motors,* above, and *Communications Workers* v. *Beck,* above, violates Section 8(b)(1)(A) of the NLRA. *California Saw & Knife Works,* above, 320 NLRB at 233, 259, 261. An employer that fails or refuses to execute an agreed-to collective-bargaining agreement on request of the union violates Section 8(d), 8(a)(5) and, derivatively, Section 8(a)(1). An employer that fails to provide relevant information requested by the union that represents the employer's employees violates Section 8(a)(5) and (1). *See, e.g., NLRB* v. *Truitt Mfg. Co.,* 351 U.S. 149 (1956).

The NLRA's recognition that a failure to perform a legal duty may constitute unlawful interference, coercion or restraint is not unique. Courts have expressly held that the failure to post notice required by regulation can be an "interference" with employee Family and Medical Leave Act rights. In a provision that "largely mimics th[e language of] § 8(a)(1) of the NLRA," *Bachelder* v. *Am. W. Airlines,* 259 F. 3d 1112, 1123 (9th Cir. 2001), the FMLA states that "[i]t shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this title." 29 U.S.C. 2615(a)(1). In interpreting this language, the Department of Labor's regulations specifically state that failure to post the required notice of FMLA rights "may constitute an interference with, restraint, or denial of the exercise of an employee's FMLA rights" under section 2615(a)(1). 29 CFR 825.300(e). Courts have agreed, finding that the failure to provide FMLA notices is an "adverse action" against the employee that supports a prima facie case of interference. *Greenwell* v. *Charles Machine Works, Inc.,* (W.D. Ok. April 15, 2011); *Smith* v. *Westchester County,* (S.D.N.Y. February 14, 2011). Accordingly, the Board finds no impediment to declaring that an employer's failure to post the required notice will violate Section 8(a)(1).[145]

As it explained in the NPRM, however, the Board expects that, in practice, few violations will be found for failures to post the notice. The Board anticipates that most employers that fail to post the notice will do so because they are unaware of the rule, and that when they learn about the rule, they will post the notice without the need for formal administrative action or litigation. 75 FR 80414. To that end, § 104.212(a) of the rule states that if an unfair labor practice charge is filed alleging failure to post the notice, ''the Regional Director will make reasonable efforts to persuade the respondent employer to post the * * * notice expeditiously,'' and that ''[i]f the employer does so, the Board expects that there will rarely be a need for further administrative proceedings.'' 75 FR 80419.

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[140] Consistent with precedent, it will be unlawful for an employer to threaten or retaliate against an employee for filing charges or testifying in a Board proceeding involving an alleged violation of the notice-posting requirement. NLRA Sections 8(a)(1), 8(a)(4), 29 U.S.C. 158(a)(1), (4); *Romar Refuse Removal,* 314 NLRB 658 (1994).

[141] *See, e.g.,* comments of FMI, Assisted Living Federation of America (ALFA).

[142] *See, e.g.,* comment of U. S. Chamber of Commerce.

[143] *See, e.g.,* comments of Employment and Labor Law Committee, Association of Corporate Counsel ("ACC"); California Chamber of Commerce (California Chamber); and National Council of Agricultural Employers (NCAE).

[144] *See* Harkin and Miller. Although the Board suggested in a footnote in *California Saw* that there was no obligation to inform employees of their Section 7 rights, 320 NLRB at 232 n. 42, this dicta merely indicated that no such obligation had yet been recognized in that particular context. To the extent it could be read as denying that such an obligation may exist, it is the considered view of the Board that this reading must be rejected. Similarly, the statement in *U.S. Postal Service,* 241 N.L.R.B. 141, 152 (1979), regarding affirmative notice obligations is limited to *Weingarten* rights, and, in any event, does not suggest that notice of NLRA rights may never be required.

[145] ALFA contends that failure to post a Board-required notice is not an unfair labor practice, but the authorities cited do not support that proposition.

Numerous comments assert that finding the failure to post the notice to be an unfair labor practice is too harsh a remedy, especially for small employers that are more likely to be excusably unaware of the rule.[146] As just stated, in practice it should almost never be necessary for proceedings to reach that point. For the few employers that may ultimately be found to have violated Section 8(a)(1) by failing to post the notice of employee rights, the only certain consequences will be an order to cease and desist and that the notice and a remedial notice be posted; those remedies do not strike the Board as severe.

Michigan Health & Hospital Association urges that an employer be allowed to correct an initial failure to post the notice without further consequences; Fireside Distributors, Inc. agrees and asks that technical violations of the rule not be subject to a finding of a violation. The Heritage Foundation backs the same approach for inadvertent failures to post. The Board disagrees. To repeat, the Board anticipates that most employers that inadvertently fail to post the notice will do so on being informed of the posting requirement, and that in those circumstances further proceedings will rarely be required. However, the Board believes that this matter is best handled through the General Counsel's traditional exercise of prosecutorial discretion in accordance with the directions given here.

California Chamber and NCAE contend that the Board should specify the ''reasonable efforts'' a Regional Director will make to persuade an employer to post the notice when a charge alleging a failure to post has been filed. They propose that the rule be amended to state that the Board will send the employer at least two mailed letters, with the notice enclosed, requesting that the employer post the notice within a specified period of time, preferably 30 days. They also assert that the Board must specify the circumstances in which additional proceedings will be appropriate. The Heritage Foundation urges that § 104.212(a) be modified to state that if an employer promptly posts the notice, ''there will be no further administrative proceedings, unless the Board has information giving the Board reason to believe that the preceding failure to do so was intentional.'' The Board rejects these suggestions because they would create unnecessary obstacles to effective enforcement of the notice requirement. That requirement is straightforward, and compliance should be a simple matter. The Board believes that the General Counsel should have discretion to address particular cases of non-compliance efficiently and appropriately, depending upon the circumstances.

B. Tolling the Section 10(b) Statute of Limitations

NLRA Section 10(b) provides in part that ''no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board[.]'' 29 U.S.C. 160(b). However, as the Board stated in the NPRM, the 6-month filing period does not begin to run until the charging party has actual or constructive notice of the allegedly unlawful conduct. See, *e.g., John Morrell & Co.,* 304 NLRB 896, 899 (1991), review denied 998 F.2d 7 (D.C. Cir. 1993) (table). 75 FR 80414. This makes intuitive sense, because it would be unfair to expect charges to be filed before the charging party could reasonably have known that the law was violated. Similar concerns for fairness justify tolling the statute of limitations where an employee, although aware of the conduct in question, is excusably unaware that the conduct is unlawful because mandatory notice was not given to the employee. The Board found that widespread ignorance of NLRA rights justified requiring notice to be posted. The Board cited the observation of the U.S. Court of Appeals for the Third Circuit in a case involving the failure to post the notice required under the ADEA, that ''[t]he [ADEA] posting requirement was undoubtedly created because Congress recognized that the very persons protected by the Act might be unaware of its existence.'' *Bonham* v. *Dresser Industries,* 569 F.2d 187, 193 (1977), cert. denied 439 U.S. 821 (1978). Accordingly, the Board proposed that tolling the 10(b) period for filing unfair labor practice charges might be appropriate where the required notice has not been posted. 75 FR 80414. For the reasons discussed below, the Board adheres to that view.

Section 10(b) is a statute of limitations, and statutes of limitations are presumed to include equitable tolling whenever the statute is silent or ambiguous on the issue. *Irwin* v. *Dep't Veterans Affairs,* 498 U.S. 89, 94–96 (1990); *Zipes* v. *Trans World Airlines, Inc.,* 455 U.S. 385, 392–98 (1982); see *Young* v. *United States,* 535 U.S. 43, 49 (2002) (''It is hornbook law that limitations periods are customarily subject to equitable tolling, unless tolling would be inconsistent with the text of the relevant statute.'' (quotations and citations omitted)); *Hallstrom* v. *Tillamook County,* 493 U.S. 20, 27 (1989) (''The running of such statutes is traditionally subject to equitable tolling.''); *Honda* v. *Clark,* 386 U.S. 484, 501 (1967); *Glus* v. *Brooklyn E.D. Terminal,* 359 U.S. 231, 232–33 (1959) (equitable tolling of statutes of limitations is ''[d]eeply rooted in our jurisprudence''); *Holmberg* v. *Armbrecht,* 327 U.S. 392, 396–97 (1946) (equitable tolling is ''read into every federal statute of limitation'').

In *Zipes,* the Supreme Court held that the timeliness provision of Title VII's charge-filing requirement was ''subject to waiver, estoppel and equitable tolling.'' 455 U.S. at 392–98. The Supreme Court expressly analogized to the NLRA, and stated that Section10(b) was not jurisdictional: ''[T]he time requirement for filing an unfair labor practice charge under the National Labor Relations Act operates as a statute of limitations subject to recognized equitable doctrines and not as a restriction of the jurisdiction of the National Labor Relations Board.'' *Id.* at n.11. *Zipes* strongly supports the proposed rule. The analogy between Title VII and the NLRA is well established, and neither the holding of *Zipes* regarding Title VII nor *Zipes'* characterization of 10(b) has ever been called into doubt.

Notices of employment rights are intended, in part, to advise employees of the kinds of conduct that may violate their rights so that they may seek appropriate remedies when violations occur. Failure to post required notices deprives employees of both the knowledge of their rights and of the availability of avenues of redress. Accordingly, a substantial majority of the courts of appeals—including the First, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Eleventh Circuits—have adopted the doctrine that the failure to post required employment law notices may result in equitable tolling of the statute of limitations. *Mercado* v. *Ritz-Carlton San Juan Hotel,* 410 F.3d 41, 47–48, 95 FEP Cases 1464 (1st Cir. 2005) (Title VII); *Bonham* v. *Dresser Industries,* above, 569 F.2d at 193 (ADEA); *Hammer* v. *Cardio Medical Products, Inc.,* 131 Fed. Appx. 829, 831–832 (3d Cir. 2005) (Title VII and ADEA);

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[146] *See, e.g.,* comments of St Mar Enterprises, Inc. and National Federation of Independent Business.

Vance v. *Whirlpool Corp.,* 716 F.2d 1010 (4th Cir. 1983) (describing notice posting tolling as "the prevailing view of the courts"); *Elliot* v. *Group Med. & Surgical Serv.,* 714 F.2d 556, 563–64 (5th Cir. 1983); *EEOC* v. *Kentucky State Police Dept.,* 80 F.3d 1086, 1096 (6th Cir. 1996), cert. denied 519 U.S. 963 (1996); *Posey* v. *Skyline Corp.,* 702 F.2d 102 (7th Cir. 1983); *Schroeder* v. *Copley Newspaper,* 879 F.2d 266 (7th Cir. 1989); *Kephart* v. *Inst. Gas Tech.,* 581 F.2d 1287, 1289 (7th Cir. 1978); *Beshears* v. *Asbill,* 930 F.2d 1348 (8th Cir. 1991); *McClinton* v. *Alabama By-Prods. Corp.,* 743 F.2d 1483 (11th Cir. 1984); *see also Henchy* v. *City of Absecon,* 148 F. Supp. 2d 435, 439 (D. N.J. 2001); *Kamens* v. *Summit Stainless, Inc.,* 586 F. Supp. 324, 328 (E.D. Pa. 1984) (FLSA). [147] (But *see Wilkerson* v. *Siegfried Ins. Agency, Inc.,* 683 F.2d 344, 347 (10th Cir. 1982) ("the simple failure to post [Title VII and ADEA] notices, without intent to actively mislead the plaintiff respecting the cause of action, does not extend the time within which a claimant must file his or her discrimination charge."))

After careful consideration, the Board is persuaded that the prevailing judicial view should apply in the NLRA context as well.[148] As an equitable concept, equitable tolling is a matter of fairness. The Board has determined that many employees are unaware of their NLRA rights and has devised a minimally burdensome means of attempting to rectify that situation—requiring employers to post workplace notices informing employees of those rights. To bar an employee who is excusably unaware of the NLRA from seeking a remedy for a violation of NLRA rights because he or she failed to file an unfair labor practice charge within the 10(b) period, when the employer did not post the required notice, would unfairly deprive the employee of the protection of the Act because of the employer's failure to comply with its legal responsibilities. To deny equitable tolling in such circumstances "would grant to the employee a right to be informed without redress for violation." *Bonham* v. *Dresser Industries,* above, 569 F.2d at 193.[149]

The Board received many comments opposing this proposed rule provision. Several comments assert that, when a charging party is unaware of the facts supporting the finding of an unfair labor practice, the Board tolls the 10(b) period only when the charged party has fraudulently concealed those facts from the charging party.[150] That is not so. The Board has long held, with court approval, that the 10(b) period begins to run only when the charging party has notice that the NLRA has been violated. The party asserting the 10(b) defense has the burden to show such notice; it may do so by showing that the charging party had either actual or constructive knowledge of the alleged unfair labor practice prior to the 10(b) period. *See, e.g., Broadway Volkswagen,* 342 NLRB 1244, 1246 (2004), enfd. sub nom. *East Bay Automotive Council* v. *NLRB,* 483 F.2d 628, 634 (9th Cir. 2007); *University Moving & Storage Co.,* 350 NLRB 6, 7, 18 (2007); *John Morrell & Co.,* above, 304 NLRB at 899; *Pullman Building Company,* 251 NLRB 1048 (1980), enfd. 691 F.2d 507 (9th Cir. 1982) (table); *Burgess Construction,* 227 NLRB 765, 766 (1977), enfd. 596 F.2d 378 (9th Cir. 1978), cert. denied 440 U.S. 940 (1979). Knowledge may be imputed if the charging party would have discovered the unlawful conduct by exercising reasonable or due diligence. *Broadway Volkswagen,* above, 342 NLRB at 1246. Certainly, the Board has found it appropriate to toll the 10(b) period when the charging party was excusably unaware of the pertinent facts because the charged party had fraudulently concealed them; *see, e.g., Burgess Construction,* above, 227 NLRB at 766; but tolling is not limited to such circumstances. *Pullman Building Company,* above, 251 NLRB at 1048.

To the extent that the comments argue that the Board should not engage in equitable tolling of the 10(b) period when an employer has merely failed to post the notice but not engaged in fraudulent concealment,[151] the Board disagrees. Fraudulent concealment concerns a different kind of equitable doctrine, and is not directly relevant to the notice posting equitable tolling doctrine hereby adopted. *See Mercado,* above, 410 F.3d at 46–47 n.8 (employer misconduct and equitable tolling doctrine form "two distinct lines of cases apply[ing] two distinct standards to two distinct bases for equitable tolling").

Some comments argue that because Section 10(b) contains a limited exception to the 6-month filing period for employees in the military, it is improper for the Board to toll the 10(b) period under other circumstances.[152] The Board rejects this argument as foreclosed by the Supreme Court's holding in *Zipes,* above, and by the long line of Board and court decisions finding tolling of the 10(b) period appropriate. In any event, the exception in Section 10(b) for persons in the military provides that if the aggrieved person "was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge." This provision does not toll the six-month period during armed service; rather, it states that the six-month period begins at discharge. *See Holland* v. *Florida,* 130 S.Ct. 2549, 2561 (2010) (rejecting argument that explicit exceptions to time limits in nonjurisdictional statute of limitations precluded equitable tolling).[153]

A number of comments contend that tolling the 10(b) period is contrary to the salutary purpose of statutes of limitations in general, and 10(b) in particular, which is "to require diligent prosecution of known claims, thereby providing finality and predictability in legal affairs and ensuring that claims will be resolved while evidence is reasonably available and fresh." [154] *Black's Law Dictionary,* 9th Edition, at 1546. The Board recognizes that with the passage of time evidence can be lost and witnesses die, move away, or their memories fade; it therefore will not lightly find that the 10(b) period should be tolled. However, like the courts whose decisions are cited above, the Board also recognizes that equitable tolling is a fundamental part of the statute of limitations, and that inequity results from barring an individual from seeking relief from a violation of his or her NLRA rights where the individual excusably was unaware of these rights. After all, the purpose of a statute of limitations is to "require diligent prosecution of known claims,'' not claims that are unknown to the injured party. As to concerns that the statute of limitations could be tolled for years, ''perhaps indefinitely,''[155] the Board responds that such a potential also exists under other statutes, as well as under the NLRA when a charging party is unaware of the facts giving rise to an alleged unfair labor practice. However, at this point, concerns about the unfairness of lengthy tolling periods are entirely speculative. Tolling is an equitable matter, and one factor to be considered in deciding whether equitable tolling is appropriate is whether it would prejudice the respondent. *Mercado,* above, 410 F.3d at 48. Accordingly, if a lengthy tolling of the 10(b) period would prejudice an employer in a given case, the Board could properly consider that factor in determining whether tolling was appropriate in that case.[156]

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[147] *See* comments of Harkin and Miller, AFL–CIO, and Service Employees International Union (SEIU).

[148] The Board has broad discretion to interpret 10(b), including equitable tolling, in accordance with its experience administering the Act. *Lodge 64, IAM* v. *NLRB,* 949 F.2d 441, 444 (D.C. Cir. 1991) (deferring to the Board's interpretation of 10(b) equitable exceptions).

[149] Under the final rule, the Board could also find the failure to post the notice to be an unfair labor practice, and could, if appropriate, consider a willful failure to post to be evidence of unlawful motive in an unfair labor practice case. However, in the absence of equitable tolling of the 10(b) period, such "redress" would not aid an employee who was excusably unaware of his or her NLRA rights, failed to file a timely charge, and thus was denied any remedy for violation of those rights. *Cf. Kanakis Co.,* 293 NLRB 435, 436 fn. 10 (1989) (possibility of criminal sanctions against employer would be little comfort to charging party if deprived of recourse to Board's remedial processes).

[150] *See, e.g.,* comments of FMI, COLLE.

[151] *See, e.g.,* comments of FMI, COLLE.

[152] *See, e.g.,* comments of California Chamber and NCAE.

[153] *American Bus Association* v. *Slater,* 231 F. 3d 1 (D.C. Cir. 2000), cited by California Chamber and NCAE, did not concern equitable tolling and is therefore inapposite. The court there also found that Congress had expressly limited the sanctions available under the Americans with Disabilities Act to those enumerated in that statute; such is not the case under the NLRA.

[154] *See, e.g.,* comments of FMI, COLLE, and U.S. Chamber of Commerce.

Several comments argue against tolling the 10(b) period because ''ignorance of the law is no excuse.''[157] This argument is amply refuted by the court decisions cited above, in which limitations periods under other workplace statutes were tolled because employers failed to post required notices. Most notably, the Fifth Circuit has emphasized that the failure to post a required notice ''vitiates the normal assumption that an employee is aware of his rights.'' *Elliot* v. *Group Med. & Surgical Serv.,* 714 F.2d 556, 563–64 (5th Cir. 1983). In any event, the maxim relied on is generally understood to have arisen in order to prevent individuals (usually in criminal cases) from deliberately failing to ascertain whether actions they contemplate taking would be lawful, and then pleading ignorance when accused of lawbreaking.[158] In the Board's view, this reasoning loses much of its force when applied to individuals, such as charging parties in unfair labor practice cases, who are not accused of any wrongdoing but who claim to have been injured by the unlawful actions of other parties.

The Board emphasizes, however, that failure to post the required notice will not automatically warrant a tolling remedy. If an employer proves that an employee had actual or constructive knowledge of the conduct alleged to be unlawful, as well as actual or constructive knowledge that the conduct violated the NLRA, and yet failed to timely file an unfair labor practice charge, the Board will not toll the 10(b) period merely because of the employer's failure to post the notice. *Cf. John Morrell & Co.,* above, 304 NLRB at 899.

The Board asked for comments concerning whether unions filing unfair labor practice charges should be deemed to have constructive knowledge of the unlawful character of the conduct at issue. All of the comments that addressed this issue answered in the affirmative.[159] Unlike most employees, unions routinely deal with issues arising under the NLRA and are therefore more familiar with the Act's provisions. Accordingly, the tolling provisions in the final rule apply only to charges filed by employees, not those filed by unions. (The Board still could toll the 10(b) period if a charging party union did not discover the facts underlying the charge within six months, if the employees reporting those events failed to alert the union within that time because they were excusably unaware of their NLRA rights.)

Several comments contend that failure to post the required notice should not toll the 10(b) period if an employee who files an unfair labor practice charge is either a union member or is represented by a union. Taft Stettinius & Hollister LLP asserts that the burden should be placed equally on unions to ensure that their organizers and members are aware of employee rights under the NLRA. California Chamber and NCAE observe that knowledge of a filing time limit is generally imputed to an individual who is represented by an attorney, *see, e.g., Mercado* v. *Ritz-Carlton San Juan Hotel,* above, 410 F.3d at 47–48; they urge that an employee who is represented by a union should be treated similarly. Conversely, three Georgetown University law students oppose the idea that union-represented employees should be deemed to have constructive knowledge of NLRA rights. They reason that some workplaces may have unrepresented as well as represented employees, and that imputing knowledge to the latter group would provide an incentive not to post the notice, thus depriving the former group of needed information. The students also suggest that some employees, though represented, may have little contact with their unions and rely on workplace notices instead of unions for relevant information.

The Board finds some merit in both sets of contentions. On the one hand, it is reasonable to assume that employees who are represented by unions are more likely to be aware of their NLRA rights than unrepresented employees. And, although being represented by a union is not the same as being represented by legal counsel, it is reasonable to assume that union officials are sufficiently conversant with the NLRA to be able to give employees effective advice as to their NLRA rights. On the other hand, some employees, though represented by unions, may in fact have little contact with their bargaining representatives for one reason or other and may, in fact, be filing charges against their representative. Thus, the Board does not find it appropriate under all circumstances to impute knowledge of NLRA rights to charge-filing employees who are union members or are represented by unions. Rather, the Board will consider evidence concerning the union's representational presence and activity in determining whether it is appropriate to toll the 10(b) period.

C. Failure To Post as Evidence of Unlawful Motive

The Board suggested that it could consider an employer's knowing failure to post the notice as evidence of unlawful motive in an unfair labor practice proceeding in which motive is an issue. 75 FR 80414–80415. A number of comments assert that the Board cannot properly take that step.[160] To the contrary, the Board has often considered other unlawful conduct as evidence of antiunion animus in cases in which unlawful motive was an element of an unfair labor practice.[161] *See, e.g., Leiser Construction, LLC,* 349 NLRB 413, 417–419 (2007) (threats, coercive statements, interrogations evidence of unlawfully motivated failure to hire), enfd. 281 Fed. Appx. 781 (10th Cir. 2008) (unpublished); *Shearer's Foods,* 340 NLRB 1093, 1094 (2003) (plant closing threat evidence of unlawfully motivated discharge); *Ferguson-Williams, Inc.,* 322 NLRB 695, 703, 707 (1996) (threats, interrogations, creation of impression of surveillance, evidence of unlawfully motivated discharge); *Champion Rivet Co.,* 314 NLRB 1097, 1098 (1994) (circulating unlawful antiunion petition, refusal to recognize and bargain with union, evidence of unlawfully motivated failure to hire). Thus, it is proper for the Board to consider a knowing and willful failure to post the notice as evidence of unlawful motive.

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[155] *See* comments of Fisher & Phillips LLC and National Grocers Association.

[156] As to ACC's concern that the rule could potentially subject employers to unfair labor practice charges based on conduct as far back as 1935, the Board stresses that tolling will be available only in the case of unlawful conduct that occurs after the rule takes effect.

[157] *See, e.g.,* comments of Coalition for a Democratic Workplace and COLLE.

[158] Moreover, even in criminal law, the principle is not absolute. *See, e.g., Lambert* v. *California,* 355 U.S. 225 (1957).

[159] *See, e.g.,* comments of U.S. Chamber of Commerce, American Trucking Associations, Taft Stettinius & Hollister LLP.

[160] *See, e.g.,* comments of COLLE and California Chamber.

[161] *See* comment of AFL–CIO.

However, the Board has noticed that it employed somewhat inconsistent language in the NPRM regarding the consideration of failure to post the notice as evidence of antiunion animus. Thus, the caption of paragraph 104.214(b) reads: ''*Knowing* noncompliance as evidence of unlawful motive.'' However, the paragraph itself states that ''If an employer has actual or constructive knowledge of the requirement to post the notice and fails or refuses to do so, the Board may consider such a *willful* refusal as evidence of unlawful motive in a case in which motive is an issue.'' (Emphasis added in both cases.) 75 FR at 80420. In the preamble to the NPRM, the Board referred only to *knowing* noncompliance as evidence of unlawful motive. 75 FR at 80414–80415. On reflection, the Board wishes to clarify this provision to state that, to be considered as evidence of unlawful motive, an employer's failure to post the notice must be both knowing and willful—*i.e.,* the employer must have actual (as opposed to constructive) knowledge of the rule and yet refuse, on no cognizable basis, to post the notice. The Board is revising the language of the rule accordingly.

The comment that prompted these revisions urges that there should be no adverse consequences for the employer that does not post the notice because it has a good-faith (but, implicitly, erroneous) belief that it is not covered by the NLRA.[162] The Board rejects this contention as it pertains to finding the failure to post to be an unfair labor practice or grounds for tolling the 10(b) period. Failure to post the notice interferes with employees' NLRA rights regardless of the reason for the failure; good faith, though commendable, is irrelevant.[163] Additionally, tolling is concerned with fairness to the employee, and these fairness concerns are unaffected by the employer's good or bad faith; as previously noted, notice posting tolling is fundamentally different from tolling based upon employer misconduct. However, an employer that fails to post the notice only because it honestly but erroneously believes that it is not subject to the NLRB's jurisdiction does not thereby indicate that it is hostile to employees' NLRA rights, but only that it believes that those rights do not apply in the employer's workplace. In such a case, the employer's good faith normally should preclude finding the failure to post to be willful or evidence of antiunion animus.

ACC contends that even though the rule states that only a ''willful'' failure to post the notice may be considered evidence of unlawful motive, in practice the Board will always infer at least constructive notice from the publication of the rule in the **Federal Register** and the maxim that ''ignorance of the law is no excuse.'' [164] The Board rejects this contention. The quoted maxim means only that an employer's actual lack of knowledge of the rule would not excuse its failure to post the notice. It would, however, undercut any suggestion that the failure to post was willful and therefore indicative of unlawful motive.

Contrary to numerous comments,[165] finding a willful failure to post the notice as evidence of animus is not the same as adopting a ''presumption of animus'' or ''presumption of unlawful motive.'' There is no such presumption. The Board's general counsel would have the burden of proving that a failure to post was willful. In any event, a willful failure to post would not be conclusive proof of unlawful motive, but merely evidence that could be considered, along with other evidence, in determining whether the general counsel had demonstrated unlawful motive.[166] Likewise, contrary to the contentions of ALFA and AHCA, the Board will not assume that any failure to post the notice is intentional and meant to prevent employees of learning their rights.

D. Other Comments

The Board received many comments asserting that if the proposed enforcement scheme for failure to post the required notice is adopted, union adherents will tear down the notices in order to harass employers and, particularly, to vitiate 10(b).[167] These comments express the concern that tolling the 10(b) period will lead to a flood of unfair labor practice charges, and that, to avoid that eventuality, employers will have to incur significant costs of policing the postings and/or installing expensive tamper-proof bulletin boards.[168] In the absence of experience with such postings, the Board deems these concerns speculative at this time. If particular employers experience such difficulties, the Board will deal with them on a case-by-case basis. However, as explained above, tolling is an equitable matter, and if an employer has posted the notice and taken reasonable steps to insure that it remains posted, it is unlikely that the Board would find tolling appropriate.

California Chamber and NCAE ask the Board to specify the ''additional remedies'' that may be imposed in the event of a notice posting violation. 104.213(a). The Board has broad discretion in crafting remedies for violations of the NLRA. *NLRB* v. *Seven-Up Bottling Co. of Miami,* 344 U.S. 344, 346 (1953). The remedies imposed in a given case depend on the nature of the violations and the particular facts in the case. The Board declines to speculate as to every possible remedy that might be imposed in every imaginable set of circumstances.

Several comments protest that employers could be fined for failing to post the notice; several others contend that the Board should levy fines instead of imposing the proposed remedies. The

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[162] One example could be an employer that believes that it is subject to the Railway Labor Act and not to the NLRA.

[163] This is so in other areas of NLRA law. For example, an employer who coercively interrogates or disciplines an individual concerning his or her union activities violates the NLRA if the individual is a statutory employee, even though the employer may have honestly believed that the individual was a statutory supervisor and not protected by the NLRA. Also, absent compelling economic circumstances, an employer that is testing the Board's certification of a newly-selected union in the court of appeals makes unilateral changes in unit employees' terms and conditions of employment at its peril; if the court affirms the certification, the unilateral changes violate NLRA Section 8(a)(5) even if the employer believed in good faith that the certification was inappropriate. *Mike O'Connor Chevrolet,* 209 NLRB 701, 703 (1974), enf. denied on other grounds 512 F.2d 684 (8th Cir. 1975).

[164] *See also* comment of American Health Care Association (AHCA).

[165] *See, e.g.,* comments of FMI and COLLE.

[166] The Georgetown law students ask whether, if failure to post the notice may be found to be an unfair labor practice and also may be considered evidence of antiunion animus, such a failure could ''satisfy an element of its own violation.'' The answer is no, because the failure to post, whether knowing or inadvertent, would be an unfair labor practice regardless of motive; knowing and willful failure to post would be relevant only in cases such as those alleging unlawful discipline, discharge, or refusal to hire, in which motive is an element of the violation.

[167] *See, e.g.,* comments of Lemon Grove Care & Rehabilitation, numerous ''postcard'' comments.

[168] One comment asserts that because of the potential for tolling the 10(b) period, ''businesses * * * will have to keep records forever[.]'' The Board finds no merit in this contention. Employers that are aware of the rule can avoid keeping records ''forever'' simply by posting the notice. Employers that are not aware of the requirement to post the notice would also be unaware of the possibility of tolling the 10(b) period in the event of a failure to post, and thus would discern no reason to—and probably would not—keep records ''forever.'' Prejudice to the employer because of long-lost records would be considered by the Board in determining whether tolling is appropriate in the particular case.

Another comment complains that ''the requirement of proof on the employer to 'certify' that this posting is up each day is burdensome[.]'' There is no such requirement.

Board rejects both contentions because, as explained in the NPRM, the Board does not have the authority to impose fines. 75 FR 80414, citing *Republic Steel Corp.* v. *NLRB,* 311 U.S. 7, 10–12 (1940). Another comment argues that the Board should not provide remedies for failing to post the notice because such remedies are not provided under other statutes. In fact, both remedies and sanctions are imposed under some statutes; *see, e.g.,* 29 CFR 1601.30 (fine of $110 per offense for failing to post notice under Title VII); 29 CFR 825.300(a)(1) (same sanction for failing to post notice under FMLA); cases cited above for tolling of limitation periods for failing to post notices under several statutes.

One comment contends that the proposed remedies were proposed solely as means of deterring failures to post the notices, and are therefore inappropriate; several other comments assert that the proposed remedies are punitive.[169] Although the Board disagrees, there is language in the NPRM that may have inadvertently suggested that the enforcement mechanisms were proposed solely for deterrent purposes. The Board wishes to correct any such misimpression. As stated above, in explaining why it was proposing those mechanisms, the Board stated in its NPRM that it was ''mindful of the need to identify effective incentives for compliance.'' 75 FR 80413. Later, referring to tolling the 10(b) period and considering a willful failure to post the notice as evidence of unlawful motive, the Board said that it ''proposes the following options intended to induce compliance with the notice-posting requirement.'' *Id.* at 80414. However, the Board made those statements while explaining why it had determined not to rely entirely on employers' voluntary compliance with the rule. (The Board had had little success in persuading employers to voluntarily post notices of employee rights during the critical period leading up to a representation election.) *Id.* By noting that the proposed enforcement scheme would have some deterrent effect in that context, the Board did not mean to imply that it was proposing those measures solely for deterrence purposes. For the reasons discussed at length above, the Board has found that finding a failure to post the notices to violate Section 8(a)(1) and, in appropriate circumstances, to warrant tolling the 10(b) period and/or inferring unlawful motive in an unfair labor practice case are legitimate remedial measures supported by extensive Board and court precedent.

In addition, in a number of places the NPRM used the term ''sanctions'' in a very loose sense to refer to aspects of the proposed enforcement scheme, inadvertently suggesting that this scheme was punitive. The term ''sanctions'' was an inapt choice of descriptor for the enforcement scheme: the classic 8(a)(1) remedial order has long been upheld as nonpunitive; equitable tolling is concerned with fairness to employees, not punishment of misconduct, and is fully consistent with current Board doctrine; and the animus provision is little more than the common-sense extension of well-established evidentiary principles that apply to many other NLRA violations, and is also not designed to punish employers. That they may also furnish incentives for employers to comply with the notice-posting rule does not detract from their legitimacy; if it were otherwise, the Board could never impose any remedy for violations of the NLRA if the remedy had a deterrent effect. In any event, the Board hereby disavows any suggestion from statements in the NPRM that the remedial measures were proposed solely as penalties.

Contrary to the tenor of numerous comments opposing this rule,[170] the Board is not issuing the rule in order to entrap unwary employers and make operations more difficult for them because of inadvertent or technical violations. It is doing so in order that employees may come to understand their NLRA rights through exposure to notices posted in their workplaces explaining those rights. Accordingly, the important thing is that the notices be posted. As explained above, an employer that fails to post the notice because it is unaware of the rule, but promptly posts the notice when the rule is brought to its attention, will nearly always avoid any further proceedings. Similarly, an employer that posts the notice but fails initially to comply with one of the technical posting requirements will almost always avoid further problems by correcting the error when it is called to the employer's attention. And if an employer is unsure of what the rule requires in a particular setting, it can seek and receive guidance from the Board.

The Service Employees International Union and the United Food and Commercial Workers propose that, in addition to the proposed enforcement scheme, the rule state that an employer's knowing failure to post the notice of employee rights during the critical period before a representation election shall be grounds for setting the election aside on the filing of proper objections. The Board finds that this is unnecessary, because the Board's notice of election, which must be posted by an employer three working days before an election takes place, contains a summary of employee NLRA rights and a list of several kinds of unfair labor practices, and failure to post that notice already constitutes grounds for setting an election aside.[171] In any event, during a union organizing campaign, the union can instruct members of its in-plant organizing committee to verify whether the notice required under this rule has been posted; if it has not, the union can so inform the employer and, if need be, the Board's regional office.

Subpart C—Ancillary Matters

Several technical issues unrelated to those discussed in the two previous subparts are set out in this subpart.

IV. Dissenting View of Member Brian E. Hayes

''Agencies may play the sorcerer's apprentice but not the sorcerer himself.''[172]

Today, my colleagues conjure up a new unfair labor practice based on a new statutory obligation. They impose on as many as six million private employers the obligation to post a notice of employee rights and selected illustrative unfair labor practices. The obligation to post is deemed enforceable through Section 8(a)(1)'s proscription of interference with employees' Section 7 rights, and the failure to post is further penalized by equitable tolling of Section 10(b)'s limitations period and the possible inference of discriminatory motivation for adverse employment actions taken in the absence of posting. While the need for a more informed constituency might be a desirable goal, it is attainable only with Congressional imprimatur. The Board's rulemaking authority, broad as it is, does not encompass the authority to promulgate a rule of this kind. Even if it did, the action taken here is arbitrary and capricious, and therefore invalid, because it is not based on substantial evidence and it lacks a reasoned analysis.

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[169] *See, e.g.,* comments of FMI, ALFA, AHCA.

[170] For example, ''This seems to be yet another trap for the employers. Another avenue to subject them to law suits and interrogations, and uneconomic activities and ungodly expenditures.''

[171] *See* Section 103.20 of the Board's Rules and Regulations.

[172] *Alexander* v. *Sandoval,* 532 U.S. 275, 291 (2001).

No Statutory Authority for the Proposed Rule

The majority concedes that the "National Labor Relations Act does not directly address an employer's obligation to post a notice of its employees' rights arising under the Act or the consequences an employer may face for failing to do so." In fact, the NLRA [173] makes no mention of any such putative obligation. The majority further acknowledges that the NLRA "is almost unique among major Federal labor laws in not including an express statutory provision requiring employers routinely to post notices at their workplaces informing employees of their statutory rights." Despite the obvious import of these admissions, the majority concludes that the Board's plenary authority under Section 6 of the Act to make rules "necessary to carry out the provisions of the Act" permits promulgation of the rule they advocate. I disagree.

Congress did not give specific statutory authority to the Board to require the posting of a general rights notice when it passed the Wagner Act in 1935. Just one year earlier, however, Congress amended the Railway Labor Act ("RLA") to include an express notice-posting requirement. 45 U.S.C. 152 Eighth; Pub. L. No. 73–442, 48 Stat. 1185, 1188 (1934). As the Supreme Court noted, the RLA served as the model for the National Labor Relations Act. *NLRB* v. *Pennsylvania Greyhound Lines,* 303 U.S. 261 (1938). See also *NLRB* v. *Jones & Laughlin Steel Corp.,* 301 U.S. 1, 44 (1937); *H. J. Heinz Co.* v. *NLRB,* 311 U.S. 514, 524–525(1941).

That Congress did not include an express notice-posting requirement when passing the Wagner Act the following year strongly implies, if not compels, the conclusion that Congress did not intend for the Board to have regulatory authority to require such a notice. Nothing in the legislative history hints of any concern by Congress about the need for employers to notify employees generally of their rights under the new enacting statute. Since 1935, despite extensive revisions in the Taft-Hartley Act amendments of 1947 and the Landrum-Griffin Act amendments of 1959, Congress has never added such authority.

On the other hand, when Congress has subsequently desired to include a general rights notice-posting requirement, it has done so expressly in other federal labor and employment laws. See Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. 2000e–10, the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 627, The Occupational Safety and Health Act, 29 U.S.C. 657(c), the Americans with Disabilities Act (ADA), 42 U.S.C. 12115, the Family and Medical Leave Act (FMLA), 29 U.S.C. 2619(a), and the Uniformed Service Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4334(a).

The majority points out that the Department of Labor (DOL) promulgated a notice-posting rule under the Fair Labor Standards Act (FLSA), although that statute does not contain a specific statutory provision on workplace postings. However, the FLSA, unlike the NLRA, imposes a data-collection and recordkeeping requirement on employers. 29 U.S.C. 211(c). DOL's Wage and Hour Administrator promulgated the notice-posting regulation in 1949 in reliance on this requirement. It appears that the propriety of the FLSA rule has never been challenged, perhaps because, unlike the rule promulgated herein, there are no citations or penalties assessed for the failure to post. This is a significant point of distinction that warrants further discussion.

It must be constantly borne in mind that the rule promulgated today makes the failure to post the required notice a violation of the Act. The majority misleadingly seeks to decouple obligation from violation in its analysis by discussing the latter in the context of enforcement of the assertedly lawful notice-posting rule. That is nonsense. Making noncompliance an unfair labor practice is integral to the rule and, consequently, integral to an analysis of whether the notice-posting requirement is a permissible exercise of the Board's rulemaking authority. Of the aforementioned agencies that have notice-posting requirements, none of them makes the failure to post unlawful, absent additional specific statutory authorization. Only the RLA, Title VII, FMLA, and the Occupational Safety Act (OSHA) have such authorizing language. ADA, the ADEA, the FLSA, and the USERRA do not. Consequently, an employer's failure to post a notice under those statutes is not subject to sanction as unlawful.

Thus, both before and after the Wagner Act, Congress has consistently manifested by express statutory language its intent to impose a general notice-posting duty on employers with respect to the rights of employees under various federal labor laws. Only one administrative agency promulgated a notice-posting requirement in the absence of such language in its enabling statute. No agency has made the failure to comply with a notice-posting requirement unlawful absent express statutory authorization, until today.

The explicit inclusion of notice-posting provisions and permissible sanctions by Congress in other labor legislation undercuts the majority's claim that this notice-posting rule is not a "major policy decision properly made by Congress alone." Strangely, the majority does not merely contend that this pattern in comparable labor legislation fails to prove that Congress did not intend that the Board should have the rulemaking authority under Section 6 to mandate the notice posting at issue here. They conversely contend that it proves Congress must have intended to confer such authority on the Board! [174]

Perhaps cognizant of the weakness of this position, the majority attempts to downplay the import of Congressional silence on the Board's authority to mandate notice posting and to enforce that mandate through unfair labor practice sanctions. They cite *Cheney R.R. Co.* v. *ICC,* 902 F. 2d 66, 68–69 (D.C. Cir. 1990), for the proposition that the maxim "expressio unius est exclusio alterius," which holds that the special mention of one thing indicates an intent for another thing not be included elsewhere, may not always be a useful tool for interpreting the intent of Congress. Obviously, the usefulness of this tool depends on the context of a particular statute. *Independent Ins. Agents of Am., Inc.* v. *Hawke,* 211 F.3d 638 (D.C. Cir. 2000) (applying the maxim). In my view, the absence of an express notice provision in the NLRA, and the failure to amend the Act to include one when Congress expressly included notice posting provisions in other labor statutes, shows that it did not intend to authorize the Board to promulgate this rule.[175]

Arguing to the contrary, the majority asserts that the notice-posting rule is entitled to deference under the analysis set forth in *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984). Under *Chevron,* where Congress has not ''directly addressed the precise question at issue,'' *id.* at 842–843, that rulemaking authority may be used in order ''to fill any gap left, implicitly or explicitly, by Congress.'' *Id.* at 843.

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[173] Throughout this dissent, I will refer generally to the statute we administer as the NLRA, unless the discussion focuses on a specific historical version, such as the Wagner Act.

[174] Of course, this reasoning would seem to dictate that the failure of the Board to inform its own employees of their general rights under the Federal Labor Relations Act is an unfair labor practice, even though that statute imposes no such express requirement. To date, I am not aware that this agency, or any other, views itself as subject to such an enforceable obligation.

[175] The majority contends that the fact that the rule comes 76 years after the NLRA was enacted is not a "condition of validity." *Mayo Foundation for Medical Education and Research* v. *United States,* 131 S.Ct. 704, 713–14 (2011) (quoting *Smiley* v. *Citibank (S.D.), N.A.,* 517 U.S. 735, 740 (1996) ("neither antiquity nor contemporaneity with the statute is a condition of validity."). I have no problem with that proposition, but if the Board lacks statutory authority to promulgate a rule, it is of no matter that it attempts to do so in year 1 or year 76 of its existence.

Even assuming that the absence of an explicit posting requirement in the NLRA is not interpreted as clear expression of Congressional intent, the majority fails to persuade that Congress delegated authority in Section 6 of the NLRA for the Board to fill a putative statutory gap by promulgating a rule that an employer commits an unfair labor practice by failing to affirmative notify its employees of their rights under the NLRA. As the Supreme Court has explained, ''the ultimate question is whether Congress would have intended, and expected, courts to treat [the regulation] as within, or outside, its delegation to the agency of 'gap-filling' authority.'' *Long Island Care at Home, Ltd.* v. *Coke,* 551 U.S. 158, 173 (2007).

There is no doubt that there are many gaps and ambiguities in the NLRA that Congress intended for the Board to address, using its labor expertise, either through adjudication or rulemaking. However, the existence of ambiguity in a statute is not enough per se to warrant deference to the agency's interpretation of its authority in every respect. The ambiguity must be such as to make it appear that Congress either explicitly or implicitly delegated authority to cure that ambiguity. *Am. Bar Ass'n* v. *FTC,* 430 F.3d 457, 469 (D.C. Cir. 2005); *Motion Picture Ass'n of America, Inc.* v. *FCC,* 309 F. 3d 796, 801 (D.C. Cir. 2002) (''*MPAA* '') (''agency's interpretation of [a] statute is not entitled to deference absent a delegation of authority from Congress to regulate in the areas at issue.'').

Thus, even when an administrative agency seeks to address what it believes is a serious interpretive problem, the Supreme Court has said that the agency ''may not exercise its authority 'in a manner that is inconsistent with the administrative structure that Congress enacted into law.' '' *FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 125(2000) (quoting *ETSI Pipeline Project* v. *Missouri,* 484 U.S. 495, 517(1988)). Further, the statute at issue must be considered as a ''symmetrical and coherent regulatory scheme.'' *Gustafson* v. *Alloyd Co.,* 513 U.S. 561, 569, 115 S.Ct. 1061, 131 L.Ed.2d 1 (1995). In our case, the exercise of rulemaking authority under Section 6 is not self-effectuating; it must be shown to relate reasonably to some other provision as part of the overall statutory scheme contemplated by Congress.[176]

Nothing in the text or the regulatory structure of the NLRA suggests that the Board has the authority to promulgate the notice-posting rule at issue in order to address a gap in the statutory scheme for resolving questions concerning representation through Section 9, or in preventing, through Sections 8 and 10, specifically enumerated unfair labor practices that adversely affect employees' Section 7 rights. On the contrary, it is well-established that the Board lacks independent authority to initiate or to solicit the initiation of representation and unfair labor practice proceedings, and Section 10(a) limits the Board's powers to preventing only the unfair labor practices listed in Section 8 of the Act. Yet the majority asserts that it may exceed these limitations by requiring employers to post a notice of employee rights and illustrative unfair labor practices at all times, regardless of whether a petition had been filed or an employer has been found to have committed an unfair labor practice.

The majority's reliance on a combination of Section 7, 8, and 10 warrants special mention. They reason that an employer interferes with Section 7 rights in general, and thereby violates Section 8(a)(1), by failing to give continuous notice to employees of those rights. It may be a truism that an employee must be aware of his rights in order to exercise them, but it does not follow that it is the employer under our statutory scheme who must provide enlightenment or else incur liability for violating those rights. The new unfair labor practice created by the rule bears no reasonable relation to any unfair labor practice in the NLRA's pre-existing enforcement scheme developed over seven decades.[177] It certainly bears no relation to the few examples the majority can muster in Board precedent. The only instance with even a passing resemblance to the rights notice-posting requirement here is the requirement that a union give notice of *Beck*[178] and *General Motors*[179] rights. However, the failure to give such a notice is not per se unlawful. It becomes an unfair labor practice only when a union, without giving notice, takes the affirmative action of seeking to obligate an employee to pay fees and dues under a union-security clause.[180] Beyond that, a union has no general obligation to give employees notice of their *Beck* and *General Motors* rights; much less does it violate the NLRA by failing to do so. By contrast, the rule promulgated today imposes a continuing obligation on employers to post notice of employees' general rights and, even absent any affirmative act involving those rights, makes the failure to maintain such notice unlawful.[181]

Unlike my colleagues, I find that the Supreme Court's opinion in *Local 357, Teamsters* v. *NLRB,* 365 U.S. 667 (1961), speaks directly to this point. In that case, the Board found a hiring hall agreement unlawfully discriminatory per se because, even though it included an express anti-discrimination provision, it did not include two additional provisions that the Board declared were necessary to prevent "unlawful encouragement of union membership." The Court disagreed, stating

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[176] *See, e.g., Mourning* v. *Family Publications Service, Inc.,* 411 U.S. 356, (1973) Unlike here, the Federal Reserve Board easily met this standard in *Mourning* when issuing a disclosure regulation under the Truth in Lending Act, even though that Act did not explicitly require lenders to make such disclosures. In sustaining the regulation, the Court found the regulation to be within the Federal Reserve's rulemaking authority and, in light of the legislative history, the disclosure requirement was not contrary to the statute. ''The crucial distinction, * * * [was that] the disclosure requirement was in fact enforced through the statute's pre-existing remedial scheme and in a manner consistent with it.'' *Ragsdale* v. *Wolverine World Wide, Inc.,* 535 U.S. 81, 94 (2002).

[177] The Senate report on the Wagner bill stressed that unfair labor practices were ''strictly limited to those enumerated in section 8. This is made clear by paragraph 8 of section 2, which provides that 'The term 'unfair labor practice' means unfair labor practice listed in Section 8,'' and by Section 10(a) empowering the Board to prevent any unfair labor practice ''listed in Section 8.'' Thus, ''[n]either the National Labor Relations Board nor the courts are given any blanket authority to prohibit whatever labor practices that in their judgment are deemed to be unfair.'' S. Rep. No. 573, 74th Cong., 1st Sess. 17 (1935) at 8–9 reprinted in *Legislative History of the National Labor Relations Act of 1935, Vol. II* at 2307–2308 (1985).

[178] *Communications Workers* v. *Beck,* 487 U.S. 735 (1988).

[179] *NLRB* v. *General Motors,* 373 U.S. 734 (1963).

[180] *California Saw & Knife Works,* 320 NLRB 224, 233 (1995).

[181] None of the FMLA cases cited by the majority support finding that a failure to post a general notice of employee rights under the NLRA is unlawful. In *Bachelder,* the Ninth Circuit actually found ''unavailing'' the employer's argument that it had satisfied all its specific FMLA notice obligations because it had complied with the FMLA's general posting rule. *Id.* at 1127, fn. 5. Rather, the court found that because the employer failed to ''notify'' an employee which of the four FMLA's ''leave year'' calculation methods it had chosen, the employer ''interfered'' with that employee's rights and, therefore, improperly used the employee's FMLA covered absences as a ''negative factor'' when taking the affirmative adverse action of discharging her.

Similarly, in neither *Greenwell* v. *Charles Machine Works, Inc.,* 2011 WL 1458565 (W.D.Okla., 2011); *Smith* v. *Westchester County,* 769 F. Supp 2d 448 (S.D.N.Y. 2011), was the FMLA general posting requirement at issue. *Smith* did not involve a notice issue and *Greenwell* involved the employer's failure to comply with a different notification obligation under the FMLA.

In any event, as previously stated, FMLA expressly provides that employers give notice to employees of rights thereunder and expressly provides for sanctions if notice is not given. The NLRA does neither.

> Perhaps the conditions which the Board attaches to hiring-hall arrangements will in time appeal to the Congress. Yet, where Congress has adopted a selective system for dealing with evils, the Board is confined to that system. *National Labor Relations Board* v. *Drivers, etc. Local Union,* 362 U.S. 274, 284–290, 80 S.Ct. 706, 712–715, 4 L.Ed.2d 710. Where, as here, Congress has aimed its sanctions only at specific discriminatory practices, the Board cannot go farther and establish a broader, more pervasive regulatory scheme.[182]

Congress in Section 8(a)(1) aimed its sanctions only at employer actions that interfere with the exercise of Section 7 rights. By this rulemaking, my colleagues go farther and establish a broader, more pervasive regulatory scheme that targets employer inaction, or silence, as unlawful interference. As *Local 357* instructs, they lack the authority to do this.[183]

American Hospital Association v. *NLRB,* 499 U.S. 606 (1991) (*AHA*), upon which the majority heavily relies, illustrates a valid exercise of authority under Section 6. In *AHA,* the Supreme Court unanimously upheld the Board's health care unit rule, finding that Section 6's general grant of rulemaking authority "was unquestionably sufficient to authorize the rule *at issue in this case* unless limited by some other provision in the Act." *Id.* at 609–10 (emphasis added). The Court further found that the rule was clearly consistent with authority under Section 9(b) to make appropriate bargaining unit determinations. It specifically rejected the argument that language in 9(b) directing the Board to decide the appropriate bargaining unit "in each case" limited its authority to define appropriate units by rulemaking.

Congress expressly authorized the Board in Section 9(b) to determine appropriate bargaining units and the Board exercised its rulemaking authority to promulgate a rule "necessary to carry out" Section 9(b). In contrast, as previously stated, there is no reasonable basis for finding that a rule making it unlawful for employers to fail to post and maintain a notice of employee rights and selected illustrative unfair labor practices is necessary to carry out any substantive section of the NLRA. Nevertheless, the majority construes *AHA* as an endorsement of deference to the exercise of Section 6 rulemaking authority whenever Congress did not expressly limit this authority. This is patently incorrect. "To suggest, as the [majority] effectively does, that *Chevron* deference is required any time a statute does not expressly negate the existence of a claimed administrative power * * *, is both flatly unfaithful to the principles of administrative law * * * and refuted by precedent." *Railway Labor Executives' Ass'n* v. *National Mediation Bd.,* 29 F.3d 655, 671 (D.C.Cir.1994) (citation omitted). Were courts "to presume a delegation of power absent an express withholding of such power, agencies would enjoy virtually limitless hegemony, a result plainly out of keeping with *Chevron* and quite likely with the Constitution as well." *Id.*

In sum, the majority's notice rule does not address a gap that Congress delegated authority to the Board to fill, whether by rulemaking or adjudication. The Supreme Court has made clear that "[w]here Congress has in the statute given the Board a question to answer, the courts will give respect to that answer; but they must be sure the question has been asked." *NLRB* v. *Insurance Agents' Int'l Union,* 361 U.S. 419, 432–433 (1960). The Supreme Court also has made clear: "[Congress] does not * * * hide elephants in mouseholes." *Whitman* v. *American Trucking Associations,* 531 U.S. 457, 468 (2001).

My colleagues' action here is markedly like the Federal Trade Commission (FTC) regulation rejected as ultra vires by the court of appeals in *Am. Bar Ass'n* v. *FTC, supra.* The FTC issued a ruling that attorneys engaged in certain practices were financial institutions subject to the privacy provision of the Gramm-Leach-Bliley Act (GBLA). Upon review of the detailed statutory scheme at issue, the court found it "difficult to believe that Congress, by any remaining ambiguity, intended to undertake the regulation [of a subject] * * * and never mentioned [it] in the statute." 430 F.3d at 469. The court further opined that to find the FTC's interpretation to be "deference-worthy, we would have to conclude that Congress not only had hidden a rather large elephant in a rather obscure mousehole, but had buried the ambiguity in which the pachyderm lurks beneath an incredibly deep mound of specificity, none of which bears the footprints of the beast or any indication that Congress even suspected its presence." *Id.* No such conclusion was possible in that case. No such conclusion is possible here. Quite simply, the Board lacks statutory authority to promulgate a rule that imposes a new obligation on employers and creates a new unfair labor practice to enforce it.

The Rule Is Arbitrary and Capricious

Even if the Board arguably has rulemaking authority in this area, deference is unwarranted under *Chevron* and the Administrative Procedure Act if the rule promulgated is "arbitrary or capricious in substance, or manifestly contrary to the statute." *United States* v. *Mead Corp.,* 533 U.S. 218, 227 (2001). Also *see AHA,* 499 U.S. at 618–20 (applying arbitrary and capricious standard in its consideration of the Board's rule on acute care hospital bargaining units). "Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfg. Ass'n of the U.S., Inc.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43 (1983). "[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.' " *Id.* (quoting *Burlington Truck Lines* v. *United States,* 371 U.S. 156, 168 (1962)). *See also Business Roundtable et al.* v. *S.E.C.,*— F.3d—, 2011 WL 2936808 (D.C. Cir., July 22, 2011) (finding SEC acted arbitrarily and capriciously by relying on insufficient empirical data supporting its rule and by completely discounting contrary studies).

In *AHA,* the Board's health care bargaining units rule was supported by "the extensive record developed during the rulemaking proceedings, as well as its experience in the adjudication of health care cases during the 13-year period between the enactment of the health care amendments and its notice of proposed rulemaking." *AHA,* 499 U.S. at 618. The Supreme Court upheld the validity of the rule finding it "based on substantial evidence and supported by a "reasoned analysis." *Id.* at 619 (citing *Motor Vehicle Mfrs. Ass.,* 463 U.S. at 57).

By contrast, the majority's articulation of the need to mandate that employers violate Section 8(a)(1) unless they post a notice of employee rights is not based on substantial evidence, nor does it provide a satisfactory explanation for the choice they have made. They contend that a mandatory notice posting rule enforceable through Section 8(a)(1) is needed because they believe that most employees are unaware of their NLRA rights and therefore cannot effectively exercise those rights. This belief is based on: (1) Some studies indicating that employees and high school students about to enter the work force are generally uninformed about labor law; (2) an influx of immigrants in the labor force who are presumably also uninformed about labor law; (3) the current low and declining percentage of union-represented employees in the private sector, which presumably means that unions are less likely to be a source of information about employee rights; and (4) the absence of any general legal requirement that employers or anyone else inform employees about their NLRA rights. 75 FR 80411.

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[182] 365 U.S. at 676.

[183] My colleagues attempt to distinguish *Local 357* as limited to an interpretation of Sec. 8(a)(3) and 8(b)(2)'s prohibition of discriminatory practices. That may have been the issue before the Court, but I do not view the quoted rationale as so limited.

Neither the Notice of Proposed Rulemaking nor today's notice summarizing comments in response to that notice come anywhere close to providing a substantial factual basis supporting the belief that most employees are unaware of their NLRA rights. As for the lack of high school education on this subject, we have only a few localized studies cited in a 1995 journal article by a union attorney.[184] With respect to the assumption that immigrants entering the work force, we have even less, only anecdotal accounts. For that matter, beyond the cited journal article, almost all supposed factual support for the premise that employees are generally unaware of their rights comes in comments received from individuals, union organizers, attorneys representing unions, and immigrant rights and worker assistance organizations agreeing, based on professed personal experience, that most employees (obviously not including most of the employee commenters) are unfamiliar with their NLRA rights. There are, as well, anecdotal accounts and comments from employers, employer associations and management attorneys to the opposite effect that the employees know about their rights under the Act, but my colleagues find these less persuasive.

In any event, the partisan opinions and perceptions, although worthy of consideration, ultimately fail as substantial evidence supporting the Board majority's initial premise for proposing the rule. There remains the Board's conclusion that the decline in union density provides the missing factual support. The majority explains that there was less need for a posting of information about NLRA rights when the union density was higher because ''friends and family who belonged to unions'' would be a source of information. This is nothing more than supposition. There is no empirical evidence of a correlation between union density and access to information about employee rights, just as there are no broad-based studies supporting the suppositions about a lack of information stemming from high school curricula or the influx of immigrants in the work force.

At bottom, the inadequacy of the record to support my colleagues' factual premise is of no matter to them. In response to comments contending that the articles and studies they cite are old and inadequately supported, they glibly respond that the commenters ''cite no more recent or better supported studies to the contrary,'' as if opponents of the proposed rule bear that burden. Of course, it is the agency's responsibility to make factual findings that support its decision and those findings must be supported by substantial evidence that must examine the relevant data and articulate a satisfactory explanation for its action. *Burlington Truck Lines,* 371 U.S. at 167.

Even more telling is the majority's footnote observation that there is no real need to conduct a study of the extent of employees' knowledge of NLRA rights because the notice posting rule would be justified even if only 10 percent of the workforce lacked such knowledge. This statement betrays the entire factual premise upon which the rulemaking initiative was purportedly founded and reveals a predisposition to issue the rule regardless of the facts. This is patently ''arbitrary and capricious.''

Even assuming, if we must, that there is some factual basis for a concern that employees lack sufficient information about their NLRA rights, the majority also fails to provide a rational explanation for why that concern dictates their choice made to address that concern. Why, for instance, was a noncompulsory information system, primarily reliant on personal union communications, sufficient when the Wagner Act was passed, but not now? The union density levels for 1935 and today are roughly the same.[185] Why at a time when the Board champions its new Web site and the Acting General Counsel continues to encourage the regional outreach programs initiated by his predecessor, do my colleagues so readily dismiss the Board's role in providing information about rights under the statute we administer? For that matter, why are the numerous employee, labor organizer, and worker advocacy groups whose comments profess awareness of these rights unable to communicate this information to those who they know lack such awareness? Is the problem one of access or message? Would a reversal of the union density trend or an increase in petition and charge filings be the only reliable indicators of increased awareness?

I would think that a reasoned explanation for the choice of a sweeping rule making it unlawful for employers to fail to post and maintain notice of employee rights would at least include some discussion of these questions and attempt to marshal more than a fragmented and inconclusive factual record to support their choice. The majority fails to do so. Their rule is patently arbitrary and capricious.

Executive Order 13496

The majority mentions in passing Executive Order 13496 [186] and the DOL implementing regulation [187] mandating that Federal contractors post a notice to employees of NLRA rights that is in most respects identical to the notice at issue here. Their consideration of this administrative action should have led them to the understanding that they lack the authority to do what the President and DOL clearly could do to advance essentially the same policy choice.

The authority to require that contractors agree to post an NLRA employee rights notice as part of doing business with the Federal government comes both from the President's authority as chief executive and the specific grant of Congressional authority in the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.* There was no need or attempt to justify the promulgation of the notice-posting rule by relying on evidence that employees lacked knowledge of their rights. Moreover, in the notice of a final rule, DOL rejected commenters' contentions that the Executive Order and implementing regulation were preempted by the Board's jurisdiction under the *Garmon* doctrine.[188] Necessarily, this meant that DOL believed that the rule requiring federal contractors to post the employee rights notice did not involve any rights protected by Section 7 of the Act, such as a right to receive such information from their employer, or conduct prohibited by the Act, such as the employer's failure to provide such information.

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[184] Peter D. DeChiara, ''*The Right to Know: An Argument for Informing Employees of Their Rights under the National Labor Relations Act,''* 32 Harv. J. on Legis. 431, at 436 and fn. 28 (1995).

In the Notice of Proposed Rulemaking, the majority also relied on two articles by Professor Charles J. Morris, a co-petitioner for notice-posting rulemaking: ''*Renaissance at the NLRB—Opportunity and Prospect for Non-Legislative Procedural Reform at the Labor Board,''* 23 Stetson L. Rev. 101, 107 (1993); and *''NLRB Protection in the Nonunion Workplace: A Glimpse at a General Theory of Section 7 Conduct,''* 137 U. Pa. L. Rev. 1673, 1675–1676 (1989). Professor Morris did not refer to any specific evidence supporting a belief that employees lack knowledge of their rights.

[185] Mayer, Gerald, ''Union Membership Trends in the United States'' (2004). *Federal Publications.* Paper 174, Appendix A. *http://digitalcommons.ilr.cornell.edu/key_workplace/.*

[186] 74 FR 6107 (Feb. 4, 2009).

[187] 75 FR 28368 (May 20, 2011).

Not only does my colleagues' rulemaking action today contradict DOL's preemption analysis, but its flaws are manifest in comparison to the DOL's rule and the authority enabling it.

Conclusion[189]

Surely, no one can seriously believe that today's rule is primarily intended to inform employees of their Section 7 right to refrain from or to oppose organizational activities, collective bargaining, and union representation. My colleagues seek through promulgation of this rule to reverse the steady downward trend in union density among private sector employees in the non-agricultural American workforce. Theirs is a policy choice which they purport to effectuate with the force of law on several fronts in rulemaking and in case-by-case adjudication. In this instance, their action in declaring that employers violate the law by failing to inform employees of their Section 7 rights is both unauthorized and arbitrary and capricious. Regardless of the arguable merits of their policy choice or the broad scope of *Chevron* deference and the Board's rulemaking authority, I am confident that a reviewing court will soon rescue the Board from itself and restore the law to where it was before the sorcerer's apprentice sent it askew.

V. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, requires agencies promulgating final rules to prepare a final regulatory flexibility analysis and to develop alternatives wherever possible, when drafting regulations that will have a significant impact on a substantial number of small entities. The focus of the RFA is to ensure that agencies "review draft rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the [RFA]." E.O. 13272, Sec. 1, 67 FR 53461 ("Proper Consideration of Small Entities in Agency Rulemaking"). However, an agency is not required to prepare a final regulatory flexibility analysis for a final rule if the agency head certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). Based on the analysis below, in which the Board has estimated the financial burdens to employers subject to the NLRA associated with complying with the requirements contained in this final rule, the Board has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule will not have a significant economic impact on a substantial number of small entities.

The primary goal of this rule is notifying employees of their rights under the NLRA. This goal is achieved through the posting of notices by employers subject to the NLRA of the rights of employees under the NLRA. The Board will make the notices available at no cost to employers; there are no information collection, record keeping, or reporting requirements.

The Board estimates that in order to comply with this rule, each employer subject to the NLRA will spend a total of 2 hours during the first year in which the rule is in effect. This includes 30 minutes for the employer to learn where and how to post the required notices, 30 minutes to acquire the notices from the Board or its Web site, and 60 minutes to post them physically and electronically, depending on where and how the employer customarily posts notices to employees. The Board assumes that these activities will be performed by a professional or business worker, who, according to Bureau of Labor Statistics data, earned a total hourly wage of about $32.20 in March 2011, including fringe benefits.[190] The Board then multiplied this figure by 2 hours to estimate the average costs for employers to comply with this rule during the first year in which the rule is in effect. Accordingly, this rule is estimated to impose average costs of $64.40 per employer subject to the NLRA (2 hours × $32.20) during the first year.[191] These costs will decrease dramatically in subsequent years because the only employers affected will be those that did not previously satisfy their posting requirements or that have since expanded their facilities or established new ones. Because the final rule will not require employers to post the notice by email, instant messaging, text messaging, and the like, the cost of compliance should be, if anything, somewhat less than the Board previously estimated.

According to the United States Census Bureau, there were approximately 6 million businesses with employees in 2007. Of those, the SBA estimates that all but about 18,300 were small businesses with fewer than 500 employees.[192] This rule does not apply to employers that do not meet the Board's jurisdictional requirements, but the Board does not have the means to calculate the number of small businesses within the Board's jurisdiction. Accordingly, the Board assumes for purposes of this analysis that the great majority of the nearly 6 million small businesses will be affected, and further that this number is a substantial number within the meaning of 5 U.S.C. 601. However, as discussed below, because the economic impact on those employers is minimal, the Board concludes that, under 5 U.S.C. 605, the final rule will not have a significant economic impact on any small employers.

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[188] *San Diego Bldg. Trades Council* v. *Garmon*, 359 U.S. 236, 244 (1959)

[189] Because I find the rule is invalid, I find it unnecessary to comment on the content of the notice or the consequences, other than finding an unfair labor practice, if an employer fails to post the required notice. For the reasons stated in my dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), I also disagree with the rule's requirement that certain employers must also electronically distribute the notice.

[190] Source: U.S. Department of Labor, Bureau of Labor Statistics, "Economic News Release," Table B–8, June 3, 2011 (available at *http://www.bls.gov*). (The Board is administratively informed that BLS estimates that fringe benefits are approximately equal to 40 percent of hourly wages. Thus, to calculate total average hourly earnings, BLS multiplies average hourly wages by 1.4. In March, 2011, average hourly wages for professional and business workers were $23.00. Table B–8. Accordingly, the Board multiplied that number by 1.4 to arrive at its estimate of $32.20 average hourly earnings, including fringe benefits.) In the NPRM, the Board estimated hourly earnings of $31.02, based on BLS data from January 2009. 75 FR 80415. The estimate has been updated to reflect increases in hourly earnings since that time. Those increases have been relatively minor, and do not affect the Board's conclusion that the economic impact of the rule will not be significant; see discussion below.

[191] The National Roofing Contractors Association asserts (without support) that "federal agencies have a notoriously poor track record in estimating the costs of new regulations on businesses"; it therefore predicts that "the actual cost for many employers could be considerably higher." The Board recognizes that some employers, generally firms with extensive and/or multiple facilities, may incur initial compliance costs in excess of the Board's estimate. For example, a company with multiple locations may require more than 30 minutes to physically post the notices on all of its various bulletin boards. The Board's estimate, however, is an average for all employers; many small employers, especially those with only one facility and/or limited electronic communication with employees, may incur lower compliance costs.

In this regard, however, contrary to numerous comments, such as that of St Mar Enterprises, Inc., the Board does not expect that the rule will be "very burdensome" for businesses with more than one facility. Normally, such firms should have to learn about the rule's requirements and acquire the notices only once, no matter how many facilities are involved. The same should be true for electronic posting: downloading the notice and posting it on an employer's Web site normally should have to be done once for all facilities. Thus, the only additional costs involved for multi-facility firms should be those of physically posting the notices at each facility.

[192] Source: SBA Office of Advocacy estimates based on data from the U.S. Department of Commerce, Bureau of the Census, and trends from the U.S. Department of Labor, Bureau of Labor Statistics, Business Employment Dynamics.

The RFA does not define ''significant economic impact.'' 5 U.S.C. 601. In the absence of specific definitions, ''what is 'significant' * * * will vary depending on the problem that needs to be addressed, the rule's requirements, and the preliminary assessment of the rule's impact.'' *See A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,* Office of Advocacy, U.S. Small Business Administration at 17 (available at *http://www.sba.gov*) (SBA Guide). As to economic impact and whether it is significant, one important indicator is the cost of compliance in relation to revenue of the entity or the percentage of profits affected. *Id.* at 17. More specifically, the criteria to be considered are:

- Whether the rule will lead to *long-term insolvency, i.e.,* regulatory costs that significantly reduce profits;
- Whether the rule will lead to *short-term insolvency, i.e.,* increasing operating expenses or new debt more than cash reserves and cash flow can support, causing nonmarginal firms to close;
- Whether the rule will have *disproportionate effects,* placing small entities at a significant competitive disadvantage; and
- Whether the rule will result in *inefficiency, i.e.,* in social costs to small entities that outweigh the social benefits resulting from the rule. *Id.* at 26.

Applying these standards, the Board concludes that the economic impact of its notice-posting rule on small employers is not significant. The Board has determined that the average cost of complying with the rule in the first year for all employers subject to the NLRA will be $64.40. It is unlikely in the extreme that this minimal cost would lead to either the short- or long-term insolvency of any business entity, or place small employers at a competitive disadvantage. Since this rule applies only to organizations within the NLRB's jurisdictional standards, the smallest employer subject to the rule must have an annual inflow or outflow across state lines of at least $50,000. *Siemons Mailing Service,* 122 NLRB 81 (1959). Given that the Board estimates that this rule will cost, on average, $64.40, the total cost for the smallest affected companies would be an amount equal to less than two-tenths of one percent of that required annual inflow or outflow (.13%). The Board concludes that such a small percentage is highly unlikely to adversely affect a small business.[193] And, in the Board's judgment, the social benefits of employees' (and employers') becoming familiar with employees' NLRA rights far outweigh the minimal costs to employers of posting notices informing employees of those rights.[194]

For all the foregoing reasons, the Board has concluded that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

As discussed in the NPRM, because it assumes that a substantial number of small businesses will be required to comply with the rule, the Board preliminarily considered alternatives that would minimize the impact of the rule, including a tiered approach for small entities with only a few employees. However, as it also explained, the Board rejected those alternatives, concluding that a tiered approach or an exemption for some small entities would substantially undermine the purpose of the rule because so many employers would be exempt under the SBA definitions. Given the very small estimated cost of compliance, it is possible that the burden on a small business of determining whether it fell into a particular tier might exceed the burden of compliance. The Board further pointed out that Congress gave the Board very broad jurisdiction, with no suggestion that it wanted to limit coverage of any part of the NLRA to only larger employers. The Board also believes that employees of small employers have no less need of a Board notice than have employees of larger employers. Finally, the Board's jurisdictional standards mean that very small employers will not be covered by the rule in any case. 75 FR 80416. (A summary of the Board's discretionary jurisdictional standards appears in § 104.204, below.) Thus, although several comments urge that small employers be exempted from the rule, the Board remains persuaded, for the reasons set forth in the NPRM, that such an exemption is unwarranted. [195]

Some comments contend that, in concluding that the proposed rule will not have a significant impact on small employers, the Board understates the rule's actual prospective costs. One comment, from Baker & Daniels LLP, argues that the Board improperly focuses solely on the cost of complying with the rule—*i.e.,* of printing and posting the notice—and ignored the ''actual economic impact of the rule's effect and purpose.'' According to this comment, it is predictable that, as more employees become aware of their NLRA rights, they will file more unfair labor practice charges and elect unions to serve as their collective-bargaining representatives. The comment further asserts that the Board has ignored the ''economic realities of unionization,'' specifically that union wages are inflationary; that unions make business less flexible, less competitive, and less profitable; and that unions cause job loss and stifle economic recovery from recessions. Accordingly, this comment contends that ''the Board's RFA certification is invalid, and [that] the Board must prepare an initial regulatory flexibility analysis.'' Numerous other comments echo similar concerns, but without reference to the RFA.

The Board disagrees with the comment submitted by Baker & Daniels LLP.[196] Section 605(b) of the RFA states that an agency need not prepare an initial regulatory flexibility analysis if the agency head certifies that *the rule* will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b) (emphasis added). The Board understands the "economic impact of * * * *the rule*" to refer to the costs to affected entities of complying with the rule, not to the economic impact of a series of subsequent decisions made by individual actors in the economy that are neither compelled by, nor the inevitable result of, the rule.[197] Even if more employees opt for union representation after learning about their rights, employers can avoid the adverse effects on business costs, flexibility, and profitability predicted by Baker & Daniels LLP and other commenters by not agreeing to unions' demands that might produce those effects.[198]

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[193] In reaching this conclusion, the Board believes it is likely that employers that might otherwise be significantly affected even by the low cost of compliance under this rule will not meet the Board's jurisdictional requirements, and consequently those employers will not be subject to this rule.

[194] See further discussion in section II, subsection C, Factual Support for the Rule, above.

[195] Cass County Electric Cooperative says that, after estimating the average cost of compliance, ''the NLRB quickly digresses into an attempt to estimate the cost of the proposed rule on only small businesses.'' The Board responds that in estimating the cost of the rule on small businesses, it was doing what the RFA explicitly requires (and that focusing on small businesses, which comprise more than 99 percent of potentially affected firms, is hardly a ''digression''). The comment also asserts that the Board concluded ''that the cost of estimating the implementation cost will likely exceed the cost of implementation, and thus is not warranted. At best, this is a poor excuse to justify the rule.'' This misstates the Board's observation that ''Given the very small estimated cost of compliance, it is possible that the burden on a small business of determining whether it fell into a particular tier might exceed the burden of compliance.'' This observation was one of the reasons why the Board rejected a tiered approach to coverage for small entities, not an ''excuse to justify the rule.'' 75 FR 80416.

[196] In any event, the comment from Baker & Daniels LLP and related comments are difficult to square with the assertions made in numerous other comments that the notice posting is unnecessary because employees are already well aware of their NLRA rights and have made informed decisions not to join unions or seek union representation.

The Board finds support for this view in the language of Section 603 of the RFA, which lists the items to be included in an initial regulatory flexibility analysis if one is required. 5 U.S.C. 603. Section 603(a) states only that such analysis "shall describe the impact of the proposed rule on small entities." 5 U.S.C. 603(a). However, Section 603(b) provides, as relevant here, that "[e]ach initial regulatory flexibility analysis * * * shall contain—* * *

"(4) a description of the projected *reporting, recordkeeping and other compliance requirements* of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record[.]" 5 U.S.C. 603(b)(4) (emphasis added). The Small Business Administration cites, as examples of "other compliance requirements,"

> (a) Capital costs for equipment needed to meet the regulatory requirements; (b) costs of modifying existing processes and procedures to comply with the proposed rule; (c) lost sales and profits resulting from the proposed rule; (d) changes in market competition as a result of the proposed rule and its impact on small entities or specific submarkets of small entities; (e) extra costs associated with the payment of taxes or fees associated with the proposed rule; and (f) hiring employees dedicated to compliance with regulatory requirements.[199]

Thus, the "impact" on small entities referred to in Section 603(a) refers only to the rule's projected compliance costs to small entities (none of which would result from posting a workplace notice), not the kinds of speculative and indirect economic impact that Baker & Daniels LLC invokes.[200]

Associated Builders and Contractors, Inc. (ABC) and Retail Industry Leaders Association (RILA) contend that the Board's RFA analysis fails to account for the costs of electronic notice posting, especially for employers that communicate with employees via multiple electronic means. Both comments deplore what they consider to be the rule's vague requirements in this respect. ABC argues that clear guidance is needed, and that the Board should withdraw the electronic notice posting requirements until more information can be gathered. RILA asserts that "[d]eciphering and complying with the Board's requirements would impose significant legal and administrative costs and inevitably result [in] litigation as parties disagree about when a communication is 'customarily used,' and whether and when employees need to be informed through multiple communications."

Numerous comments assert that employers, especially small employers that lack professional human resources staff, will incur significant legal expenses as they attempt to comply with the rule. For example, Fisher and Phillips, a management law firm, urges that the cost of legal fees should be included in assessing the economic impact of the proposed rule: "[I]t might be considered naïve to assume that a significant percentage of small employers would not seek the advice of counsel, and it would be equally naïve to assume that a significant percentage of those newly-engaged lawyers could be retained for as little as $31.02/hour."

Those comments are not persuasive. The choice to retain counsel is not a requirement for complying with the rule. This is not a complicated or nuanced rule. The employer is only required to post a notice provided by the Board in the same manner in which that employer customarily posts notices to its employees. The Board has explained above what the rule's electronic posting provisions require of employers in general, and it has simplified those provisions by eliminating the requirement that notices be provided by email and many other forms of electronic communication.[201] It should not be necessary for employers, small or large, to add human resources staff, retain counsel, or resort to litigation if they have questions concerning whether the proposed rule applies to them or about the requirements for technical compliance with the rule, including how the electronic posting provisions specifically affect their enterprises.[202] Such questions can be directed to the Board's regional offices, either by telephone, personal visit, email, or regular mail, and will be answered free of charge by representatives of the Board.[203]

Cass County Electric Cooperative argues that the Board failed to take into account legal expenses that employers will incur if they fail to "follow the letter of the proposed rule." The comment urges that the Board should estimate the cost to businesses "should they have to defend themselves against an unfair labor practice for failure to comply with the rule, no matter what the circumstances for that failure might be," presumably including failures to post the notice by employers that are unaware of the rule and inadvertent failures to comply with technical posting requirements. International Foodservice Distributors Association contends that the Board also should have considered the costs of tolling the statute of limitations when employers fail to post the notice. However, the costs referred to in these comments are costs of not complying with the rule, not compliance costs. As stated above, for RFA purposes, the relevant economic analysis focuses on the costs of complying with the rule.[204]

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[197] For RFA purposes, the relevant economic impact on small entities is the impact of compliance with the rule. *Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327, 342 (D.C. Cir. 1985), cited in SBA Guide, above, at 77.

[198] NLRA Section 8(d) expressly states that the obligation to bargain in good faith "does not compel either party to agree to a proposal or require the making of a concession[.]" 29 U.S.C. 158(d).

[199] SBA Guide, above, at 34.

[200] Baker & Daniels LLP cites no authority to support its contention that the RFA is concerned with costs other than the costs of compliance with the rule, and the Board is aware of none.

[201] Contrary to ABC's and RILA's assertions, the Board did estimate the cost of complying with the rule's electronic notice posting requirements; its estimated average cost of $62.04 specifically included such costs. 75 FR 80415. Although ABC faults the Board for failing to issue a preliminary request for information (RFI) concerning the ways employers communicate with employees electronically, the Board did ask for comments concerning its RFA certification in the NPRM, *id.* at 80416. In this regard, ABC states only that "many ABC member companies communicate with employees through email or other electronic means," which the Board expressly contemplated in the NPRM, *id.* at 80413, and which is also the Board's practice with respect to communicating with its own employees. If ABC has more specific information it has failed to provide it. In any event, the final rule will not require email or many other types of electronic notice.

[202] Association of Corporate Counsel contends that employers will have to modify their policies and procedures manuals as a result of the rule. The Board questions that contention, but even if some employers do take those steps, they would not be a cost of complying with the rule.

[203] Fisher and Phillips also suggest that the Board failed to take into account the effect that the proposed rule would have on the Board's own case intake and budget. The RFA, however, does not require an estimate of the economic effects of proposed rules on Federal agencies.

[204] *See* fn. 197, above.

Some comments assert that the content of the notice will prompt employee questions, which managers and supervisors will have to answer, and be trained to answer, and that the Board failed to account for the cost of such training and discussions in terms of lost work time.[205] Other comments contend that employers will incur costs of opposing an increased number of union organizing campaigns.[206] Relatedly, several comments state that employers should be allowed to, and/or will respond to the notice by informing employees of aspects of unionization and collective bargaining that are not covered by the notice; some suggest that employers may post their own notices presenting their point of view.[207] (A few comments, by contrast, protest that employers will be prohibited from presenting their side of the issues raised by the posting of notices.) The Board responds that any costs that employers may incur in responding to employee questions, in setting forth the employers' views on unions and collective bargaining, or in opposing union organizing efforts will be incurred entirely at the employers' own volition; they are not a cost of complying with the rule.

As discussed above, many comments express concerns that union supporters will tear down the notices in order to expose employers to 8(a)(1) liability for failing to post the notices. Some of these comments also contend that, as a result, employers will have to spend considerable time monitoring the notices to make sure that they are not torn down, or incur additional costs of installing tamper-proof bulletin boards. One commenter predicts that his employer will have to spend $20,000 for such bulletin boards at a single facility, or a total of $100,000 at all of its facilities, and even then will have to spend two hours each month monitoring the postings. For the reasons discussed above, the Board is not convinced at this time that the problem of posters being torn down is anything more than speculative, and accordingly is inclined to discount these predictions substantially. In any event, the rule requires only that employers ''take *reasonable* steps''—not every conceivable step—to ensure that the notice is not defaced or torn down. The rule does not require, or even suggest, that employers must spend thousands of dollars to install tamper-proof bulletin boards or that employers must constantly monitor the notice.[208]

One comment contends that most small employers do not have 11 x 17-inch color printers, and therefore will have to have the posters printed commercially at a cost that, alone, assertedly will exceed the Board's estimate of the cost of the rule. The Board understands the concerns of this small employer. The Board points out that it will furnish a reasonable number of copies of the notice free of charge to any requesting employer. Moreover, as explained above, employers may reproduce the notice in black-and-white and may print the notice on two standard-sized, 8.5 x 11-inch pages and tape or bind them together, rather than having them printed commercially.

A number of comments argue that the rule will lead to workplace conflict. For example, the comment of Wiseda Corporation contains the following:

> *Unnecessary Confusion and Conflict in the Workplace.* The labor law terms and industrial union language of the proposed notice (such as hiring hall and concerted activity) present an unclear and adversarial picture to employees. Most non-union employers like us, who wish to *remain* non-union, encourage cooperative problem solving. In a modern non-union workplace, to require such a poster encouraging strikes and restroom leaflets is disrespectful of the hard work and good intentions of employers, management, and employees. The proposed poster would exist alongside other company notices on problem-solving, respect for others, resolving harassment issues, etc., and would clearly be out of character and inappropriate. (Emphasis in original.)

Another comment puts it more bluntly: ''The notice as proposed is more of an invitation to cause employee/employer disputes rather than an explanation of employee rights.'' The Board's response is that the ill effects predicted in these comments, like the predicted adverse effects of unionization discussed above, are not costs of compliance with the rule, but of employees' learning about their workplace rights. In addition, Congress, not the Board, created the subject rights and did so after finding that vesting employees with these rights would reduce industrial strife.

B. Paperwork Reduction Act (PRA)[209]

The final rule imposes certain minimal burdens associated with the posting of the employee notice required by § 104.202. As noted in § 104.202(e), the Board will make the notice available, and employers will be permitted to post copies of the notice that are exact duplicates in content, size, format, and type size and style. Under the regulations implementing the PRA, ''[t]he public disclosure of information originally supplied by the Federal government to [a] recipient for the purpose of disclosure to the public'' is not considered a ''collection of information'' under the Act. *See* 5 CFR 1320.3(c)(2). Therefore, contrary to several comments, the posting requirement is not subject to the PRA.[210]

The Board received no comments suggesting that the PRA covers the costs to the Federal government of administering the regulations established by the proposed rule. Therefore, the NPRM's discussion of this issue stands.

Accordingly, this rule does not contain information collection requirements that require approval by the Office of Management and Budget under the PRA (44 U.S.C. 3507 *et seq.*).

C. Congressional Review Act (CRA)[211]

This rule is a ''major rule'' as defined by Section 804(2) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act), because it will have an effect on the economy of more than $100 million, at least during the year it takes effect. 5 U.S.C. 804(2)(A).[212] Accordingly, the

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[205] *See, e.g.,* comments of Cass County Electric Cooperative and Baker & McKenzie. The latter estimates that each private sector employee will spend at least an hour attending meetings concerning the content of the notice, and that the cost to the economy in terms of lost employee work time will be $3.5 billion.

[206] *See, e.g.,* comment of Dr. Pepper Snapple Group.

[207] *See, e.g.,* comments of Metro Toyota and Capital Associated Industries, Inc.

[208] Contrary to one comment's suggestion, no employer will be ''bankrupted'' by fines imposed if the notice is torn down. As explained above, the Board does not have the authority to impose fines.

[209] 44 U.S.C. 3501 *et seq.*

[210] The California Chamber of Commerce and the National Council of Agricultural Employers dispute this conclusion. They assert that the PRA distinguishes between the ''agencies'' to which it applies and the ''Federal government,'' and therefore that the exemption provided in 5 CFR 1320.3(c)(2) applies only to information supplied by ''the actual Federal government,'' not to information supplied by a Federal agency such as the Board. The flaw in this argument is that there is no such legal entity as ''the [actual] Federal government.'' What is commonly referred to as ''the Federal government'' is a collection of the three branches of the United States government, including the departments of the executive branch, and the various independent agencies, including the Board. If ''the Federal government'' can be said to act at all, it can do so only through one or more of those entities—in this instance, the Board—and that is undoubtedly the meaning that the drafters of 5 CFR 1320(c)(2) meant to convey.

[211] 5 U.S.C. 801 *et seq.*

[212] A rule is a ''major rule'' for CRA purposes if it will (A) Have an annual effect on the economy of $100 million or more; (B) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (C) result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. 5 U.S.C. 804. The notice-posting rule is a ''major

Continued

effective date of the rule is 75 days after publication in the **Federal Register**.[213]

List of Subjects in 29 CFR Part 104

Administrative practice and procedure, Employee rights, Labor unions.

Text of Final Rule

Accordingly, a new part 104 is added to 29 CFR chapter 1 to read as follows:

PART 104—NOTIFICATION OF EMPLOYEE RIGHTS; OBLIGATIONS OF EMPLOYERS

Subpart A—Definitions, Requirements for Employee Notice, and Exceptions and Exemptions

Sec.

104.201 What definitions apply to this part?
104.202 What employee notice must employers subject to the NLRA post in the workplace?
104.203 Are Federal contractors covered under this part?
104.204 What entities are not subject to this part?
Appendix to Subpart A—Text of Employee Notice

Subpart B—General Enforcement and Complaint Procedures

104.210 How will the Board determine whether an employer is in compliance with this part?
104.211 What are the procedures for filing a charge?
104.212 What are the procedures to be followed when a charge is filed alleging that an employer has failed to post the required employee notice?
104.213 What remedies are available to cure a failure to post the employee notice?
104.214 How might other Board proceedings be affected by failure to post the employee notice?

Subpart C—Ancillary Matters

104.220 What other provisions apply to this part?

Authority: National Labor Relations Act (NLRA), Section 6, 29 U.S.C. 156; Administrative Procedure Act, 5 U.S.C. 553.

Subpart A—Definitions, Requirements for Employee Notice, and Exceptions and Exemptions

§ 104.201 What definitions apply to this part?

Employee includes any employee, and is not limited to the employees of a particular employer, unless the NLRA explicitly states otherwise. The term includes anyone whose work has ceased because of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment. However, it does not include agricultural laborers, supervisors, or independent contractors, or anyone employed in the domestic service of any family or person at his home, or by his parent or spouse, or by an employer subject to the Railway Labor Act (45 U.S.C. 151 *et seq.*), or by any other person who is not an employer as defined in the NLRA. 29 U.S.C. 152(3).

Employee notice means the notice set forth in the Appendix to Subpart A of this part that employers subject to the NLRA must post pursuant to this part.

Employer includes any person acting as an agent of an employer, directly or indirectly. The term does not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization. 29 U.S.C. 152(2). Further, the term ''employer'' does not include entities over which the Board has been found not to have jurisdiction, or over which the Board has chosen through regulation or adjudication not to assert jurisdiction.

Labor organization means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. 29 U.S.C. 152(5).

National Labor Relations Board (Board) means the National Labor Relations Board provided for in section 3 of the National Labor Relations Act, 29 U.S.C. 153. 29 U.S.C. 152(10).

Person includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in cases under title 11 of the United States Code, or receivers. 29 U.S.C. 152(1).

Rules, regulations, and orders, as used in § 104.202, means rules, regulations, and relevant orders issued by the Board pursuant to this part.

Supervisor means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. 29 U.S.C. 152(11).

Unfair labor practice means any unfair labor practice listed in section 8 of the National Labor Relations Act, 29 U.S.C. 158. 29 U.S.C. 152(8).

Union means a labor organization as defined above.

§ 104.202 What employee notice must employers subject to the NLRA post in the workplace?

(a) *Posting of employee notice.* All employers subject to the NLRA must post notices to employees, in conspicuous places, informing them of their NLRA rights, together with Board contact information and information concerning basic enforcement procedures, in the language set forth in the Appendix to Subpart A of this part.

(b) *Size and form requirements.* The notice to employees shall be at least 11 inches by 17 inches in size, and in such format, type size, and style as the Board shall prescribe. If an employer chooses to print the notice after downloading it from the Board's Web site, the printed notice shall be at least 11 inches by 17 inches in size.

(c) *Adaptation of language.* The National Labor Relations Board may find that an Act of Congress, clarification of existing law by the courts or the Board, or other circumstances make modification of the employee notice necessary to achieve the purposes of this part. In such circumstances, the Board will promptly issue rules, regulations, or orders as are needed to ensure that all future employee notices contain appropriate language to achieve the purposes of this part.

(d) *Physical posting of employee notice.* The employee notice must be posted in conspicuous places where they are readily seen by employees, including all places where notices to

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rule'' because, as explained in the discussion of the Regulatory Flexibility Act above, the Board has estimated that the average cost of compliance with the rule will be approximately $64.40 per affected employer; thus, because there are some 6 million employers that could potentially be affected by the rule, the total cost to the economy of compliance with the rule will be approximately $386.4 million. As further explained, nearly all of that cost will be incurred during the year in which the rule takes effect; in subsequent years, the only costs of compliance will be those incurred by employers that either open new facilities or expand existing ones, and those that for one reason or another fail to comply with the rule during the first year. The Board therefore expects that the costs of compliance will be far less than $100 million in the second and subsequent years. The Board is confident that the rule will have none of the effects enumerated in 5 U.S.C. 804(2)(B) and (C) above.

[213] The Board finds unpersuasive the suggestions in several comments that the effective date of the rule be postponed to as late as April 15, 2012. The Board finds nothing in the requirements of the rule or in the comments received that would warrant postponing the effective date.

employees concerning personnel rules or policies are customarily posted. Where 20 percent or more of an employer's workforce is not proficient in English and speaks a language other than English, the employer must post the notice in the language employees speak. If an employer's workforce includes two or more groups constituting at least 20 percent of the workforce who speak different languages, the employer must either physically post the notice in each of those languages or, at the employer's option, post the notice in the language spoken by the largest group of employees and provide each employee in each of the other language groups a copy of the notice in the appropriate language. If an employer requests from the Board a notice in a language in which it is not available, the requesting employer will not be liable for non-compliance with the rule until the notice becomes available in that language. An employer must take reasonable steps to ensure that the notice is not altered, defaced, covered by any other material, or otherwise rendered unreadable.

(e) *Obtaining a poster with the employee notice.* A poster with the required employee notice, including a poster with the employee notice translated into languages other than English, will be printed by the Board, and may be obtained from the Board's office, 1099 14th Street, NW., Washington, DC 20570, or from any of the Board's regional, subregional, or resident offices. Addresses and telephone numbers of those offices may be found on the Board's Web site at *http://www.nlrb.gov.* A copy of the poster in English and in languages other than English may also be downloaded from the Board's Web site at *http://www.nlrb.gov.* Employers also may reproduce and use copies of the Board's official poster, provided that the copies duplicate the official poster in size, content, format, and size and style of type. In addition, employers may use commercial services to provide the employee notice poster consolidated onto one poster with other Federally mandated labor and employment notices, so long as the consolidation does not alter the size, content, format, or size and style of type of the poster provided by the Board.

(f) *Electronic posting of employee notice.* (1) In addition to posting the required notice physically, an employer must also post the required notice on an intranet or internet site if the employer customarily communicates with its employees about personnel rules or policies by such means. An employer that customarily posts notices to employees about personnel rules or policies on an intranet or internet site will satisfy the electronic posting requirement by displaying prominently—*i.e.,* no less prominently than other notices to employees—on such a site either an exact copy of the poster, downloaded from the Board's Web site, or a link to the Board's Web site that contains the poster. The link to the Board's Web site must read, ''Employee Rights under the National Labor Relations Act.''

(2) Where 20 percent or more of an employer's workforce is not proficient in English and speaks a language other than English, the employer must provide notice as required in paragraph (f)(1) of this section in the language the employees speak. If an employer's workforce includes two or more groups constituting at least 20 percent of the workforce who speak different languages, the employer must provide the notice in each such language. The Board will provide translations of the link to the Board's Web site for any employer that must or wishes to display the link on its Web site. If an employer requests from the Board a notice in a language in which it is not available, the requesting employer will not be liable for non-compliance with the rule until the notice becomes available in that language.

§ 104.203 Are Federal contractors covered under this part?

Yes, Federal contractors are covered. However, contractors may comply with the provisions of this part by posting the notices to employees required under the Department of Labor's notice-posting rule, 29 CFR part 471.

§ 104.204 What entities are not subject to this part?

(a) The following entities are excluded from the definition of ''employer'' under the National Labor Relations Act and are not subject to the requirements of this part:

(1) The United States or any wholly owned Government corporation;

(2) Any Federal Reserve Bank;

(3) Any State or political subdivision thereof;

(4) Any person subject to the Railway Labor Act;

(5) Any labor organization (other than when acting as an employer); or

(6) Anyone acting in the capacity of officer or agent of such labor organization.

(b) In addition, employers employing exclusively workers who are excluded from the definition of ''employee'' under § 104.201 are not covered by the requirements of this part.

(c) This part does not apply to entities over which the Board has been found not to have jurisdiction, or over which the Board has chosen through regulation or adjudication not to assert jurisdiction.

(d)(1) This part does not apply to entities whose impact on interstate commerce, although more than de minimis, is so slight that they do not meet the Board's discretionary jurisdiction standards. The most commonly applicable standards are:

(i) The retail standard, which applies to employers in retail businesses, including home construction. The Board will take jurisdiction over any such employer that has a gross annual volume of business of $500,000 or more.

(ii) The nonretail standard, which applies to most other employers. It is based either on the amount of goods sold or services provided by the employer out of state (called ''outflow'') or goods or services purchased by the employer from out of state (called ''inflow''). The Board will take jurisdiction over any employer with an annual inflow or outflow of at least $50,000. Outflow can be either direct—to out-of-state purchasers—or indirect—to purchasers that meet other jurisdictional standards. Inflow can also be direct—purchased directly from out of state—or indirect—purchased from sellers within the state that purchased them from out-of-state sellers.

(2) There are other standards for miscellaneous categories of employers. These standards are based on the employer's gross annual volume of business unless stated otherwise. These standards are listed in the Table to this section.

TABLE TO § 104.204

Employer category	Jurisdictional standard
Amusement industry	$500,000.
Apartment houses, condominiums, cooperatives	$500,000.
Architects	Nonretail standard.

TABLE TO § 104.204—Continued

Employer category	Jurisdictional standard
Art museums, cultural centers, libraries	$1 million.
Bandleaders	Retail/nonretail (depends on customer).
Cemeteries	$500,000.
Colleges, universities, other private schools	$1 million.
Communications (radio, TV, cable, telephone, telegraph)	$100,000.
Credit unions	Either retail or nonretail standard.
Day care centers	$250,000.
Gaming industry	$500,000.
Health care institutions:	
Nursing homes, visiting nurses associations	$100,000.
Hospitals, blood banks, other health care facilities (including doctors' and dentists' offices)	$250,000.
Hotels and motels	$500,000.
Instrumentalities of interstate commerce	$50,000.
Labor organizations (as employers)	Nonretail standard.
Law firms; legal service organizations	$250,000.
Newspapers (with interstate contacts)	$200,000.
Nonprofit charitable institutions	Depends on the entity's substantive purpose.
Office buildings; shopping centers	$100,000.
Private clubs	$500,000.
Public utilities	$250,000 or nonretail standard.
Restaurants	$500,000.
Social services organizations	$250,000.
Symphony orchestras	$1 million.
Taxicabs	$500,000.
Transit systems	$250,000.

(3) If an employer can be classified under more than one category, the Board will assert jurisdiction if the employer meets the jurisdictional standard of any of those categories.

(4) There are a few employer categories without specific jurisdictional standards:

(i) Enterprises whose operations have a substantial effect on national defense or that receive large amounts of Federal funds

(ii) Enterprises in the District of Columbia

(iii) Financial information organizations and accounting firms

(iv) Professional sports

(v) Stock brokerage firms

(vi) U. S. Postal Service

(5) A more complete discussion of the Board's jurisdictional standards may be found in *An Outline of Law and Procedure in Representation Cases,* Chapter 1, found on the Board's Web site, *http://www.nlrb.gov*.

(e) This part does not apply to the United States Postal Service.

Appendix to Subpart A—Text of Employee Notice

"EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT

The National Labor Relations Act (NLRA) guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity or to refrain from engaging in any of the above activity. Employees covered by the NLRA* are protected from certain types of employer and union misconduct. This Notice gives you general information about your rights, and about the obligations of employers and unions under the NLRA. Contact the National Labor Relations Board (NLRB), the Federal agency that investigates and resolves complaints under the NLRA, using the contact information supplied below, if you have any questions about specific rights that may apply in your particular workplace.

"Under the NLRA, you have the right to:

- Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.
- Form, join or assist a union.
- Bargain collectively through representatives of employees' own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions.
- Discuss your wages and benefits and other terms and conditions of employment or union organizing with your co-workers or a union.
- Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union.
- Strike and picket, depending on the purpose or means of the strike or the picketing.
- Choose not to do any of these activities, including joining or remaining a member of a union.

"Under the NLRA, it is illegal for your employer to:

- Prohibit you from talking about or soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms.
- Question you about your union support or activities in a manner that discourages you from engaging in that activity.
- Fire, demote, or transfer you, or reduce your hours or change your shift, or otherwise take adverse action against you, or threaten to take any of these actions, because you join or support a union, or because you engage in concerted activity for mutual aid and protection, or because you choose not to engage in any such activity.
- Threaten to close your workplace if workers choose a union to represent them.
- Promise or grant promotions, pay raises, or other benefits to discourage or encourage union support.
- Prohibit you from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances.
- Spy on or videotape peaceful union activities and gatherings or pretend to do so.

"Under the NLRA, it is illegal for a union or for the union that represents you in bargaining with your employer to:

- Threaten or coerce you in order to gain your support for the union.
- Refuse to process a grievance because you have criticized union officials or because you are not a member of the union.
- Use or maintain discriminatory standards or procedures in making job referrals from a hiring hall.
- Cause or attempt to cause an employer to discriminate against you because of your union-related activity.
- Take adverse action against you because you have not joined or do not support the union.

"If you and your co-workers select a union to act as your collective bargaining representative, your employer and the union are required to bargain in good faith in a genuine effort to reach a written, binding agreement setting your terms and conditions of employment. The union is required to fairly represent you in bargaining and enforcing the agreement.

"Illegal conduct will not be permitted. If you believe your rights or the rights of others have been violated, you should contact the NLRB promptly to protect your rights, generally within six months of the unlawful activity. You may inquire about possible violations without your employer or anyone else being informed of the inquiry. Charges may be filed by any person and need not be filed by the employee directly affected by the violation. The NLRB may order an employer to rehire a worker fired in violation of the law and to pay lost wages and benefits, and may order an employer or union to cease violating the law. Employees should seek assistance from the nearest regional NLRB office, which can be found on the Agency's Web site: *http://www.nlrb.gov.*

You can also contact the NLRB by calling toll-free: 1–866–667–NLRB (6572) or (TTY) 1–866–315–NLRB (1–866–315–6572) for hearing impaired.

If you do not speak or understand English well, you may obtain a translation of this notice from the NLRB's Web site or by calling the toll-free numbers listed above.

"*The National Labor Relations Act covers most private-sector employers. Excluded from coverage under the NLRA are public-sector employees, agricultural and domestic workers, independent contractors, workers employed by a parent or spouse, employees of air and rail carriers covered by the Railway Labor Act, and supervisors (although supervisors that have been discriminated against for refusing to violate the NLRA may be covered).

"This is an official Government Notice and must not be defaced by anyone."

Subpart B—General Enforcement and Complaint Procedures

§ 104.210 How will the Board determine whether an employer is in compliance with this part?

The Board has determined that employees must be aware of their NLRA rights in order to exercise those rights effectively. Employers subject to this rule are required to post the employee notice to inform employees of their rights. Failure to post the employee notice may be found to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by NLRA Section 7, 29 U.S.C. 157, in violation of NLRA Section 8(a)(1), 29 U.S.C. 158(a)(1).

Normally, the Board will determine whether an employer is in compliance when a person files an unfair labor practice charge alleging that the employer has failed to post the employee notice required under this part. Filing a charge sets in motion the Board's procedures for investigating and adjudicating alleged unfair labor practices, and for remedying conduct that the Board finds to be unlawful. *See* NLRA Sections 10–11, 29 U.S.C. 160–61, and 29 CFR part 102, subpart B.

§ 104.211 What are the procedures for filing a charge?

(a) *Filing charges.* Any person (other than Board personnel) may file a charge with the Board alleging that an employer has failed to post the employee notice as required by this part. A charge should be filed with the Regional Director of the Region in which the alleged failure to post the required notice is occurring.

(b) *Contents of charges.* The charge must be in writing and signed, and must be sworn to before a Board agent, notary public, or other person authorized to administer oaths or take acknowledgements, or contain a declaration by the person signing it, under penalty of perjury, that its contents are true and correct. The charge must include:

(1) The charging party's full name and address;

(2) If the charge is filed by a union, the full name and address of any national or international union of which it is an affiliate or constituent unit;

(3) The full name and address of the employer alleged to have violated this part; and

(4) A clear and concise statement of the facts constituting the alleged unfair labor practice.

§ 104.212 What are the procedures to be followed when a charge is filed alleging that an employer has failed to post the required employee notice?

(a) When a charge is filed with the Board under this section, the Regional Director will investigate the allegations of the charge. If it appears that the allegations are true, the Regional Director will make reasonable efforts to persuade the respondent employer to post the required employee notice expeditiously. If the employer does so, the Board expects that there will rarely be a need for further administrative proceedings.

(b) If an alleged violation cannot be resolved informally, the Regional Director may issue a formal complaint against the respondent employer, alleging a violation of the notice-posting requirement and scheduling a hearing before an administrative law judge. After a complaint issues, the matter will be adjudicated in keeping with the Board's customary procedures. *See* NLRA Sections 10 and 11, 29 U.S.C. 160, 161; 29 CFR part 102, subpart B.

§ 104.213 What remedies are available to cure a failure to post the employee notice?

(a) If the Board finds that the respondent employer has failed to post the required employee notices as alleged, the respondent will be ordered to cease and desist from the unlawful conduct and post the required employee notice, as well as a remedial notice. In some instances additional remedies may be appropriately invoked in keeping with the Board's remedial authority.

(b) Any employer that threatens or retaliates against an employee for filing charges or testifying at a hearing concerning alleged violations of the notice-posting requirement may be found to have committed an unfair labor practice. *See* NLRA Section 8(a)(1) and 8(a)(4), 29 U.S.C. 158(a)(1), (4).

§ 104.214 How might other Board proceedings be affected by failure to post the employee notice?

(a) Tolling of statute of limitations. When an employee files an unfair labor practice charge, the Board may find it appropriate to excuse the employee from the requirement that charges be filed within six months after the occurrence of the allegedly unlawful conduct if the employer has failed to post the required employee notice unless the employee has received actual or constructive notice that the conduct complained of is unlawful. *See* NLRA Section 10(b), 29 U.S.C. 160(b).

(b) Noncompliance as evidence of unlawful motive. The Board may consider a knowing and willful refusal to comply with the requirement to post the employee notice as evidence of unlawful motive in a case in which motive is an issue.

Subpart C—Ancillary Matters

§ 104.220 What other provisions apply to this part?

(a) The regulations in this part do not modify or affect the interpretation of any other NLRB regulations or policy.

(b)(1) This subpart does not impair or otherwise affect:

(i) Authority granted by law to a department, agency, or the head thereof; or

(ii) Functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(2) This subpart must be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This part creates no right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Signed in Washington, DC, August 22, 2011.

Wilma B. Liebman,

Chairman.

[FR Doc. 2011–21724 Filed 8–25–11; 8:45 am]

BILLING CODE 7545–01–P

From: Paul Morris [[redacted]]
Sent: 10/21/2013 12:44:26 AM
To: Jeffrey Epstein [jeevacation@gmail.com]
Subject: Fw: Weekend Snippets [C]
Attachments: graycol.gif

Importance: High

Classification: Confidential

Vinit is working with me on some large clients now, good resource, I will introduce you to him and few other sr. folks before year end either in NYC or in europe, just some directional thoughts/observations not necessarily for you,

Vinit Sahni

----- Original Message -----
From: Vinit Sahni
Sent: 10/20/2013 07:05 PM GDT
To: Vinit Sahni
Subject: Weekend Snippets (internal only) [I]
Classification: For internal use only

Here we are -> record highs for the S&P 500, the S&P 400 Midcaps, and small cap Russell 2000. Should we be asking ourselves if this is the Terminal Phase or will this continue ?

In these snippets here is a quick mark to market on where we are and some of the trades below. The theme of the trades below is very clear, carry outperformance and lower vol. Vol has broken down and we are on the leg down to 2009 levels (includes FX vol, rates vol, commodity vol etc) -> this has prompted additional risk taking and technicians for example are calling for 1775 levels in the S&P -> sharpe ratios of high carry trades looks very compelling here

Mark to Market:
With the US government reopened / debt ceiling raised, Obama stated -> there were "no winners." It's been only about 3 weeks, but the fourth quarter has already shown itself worthy of the history books. If the spec community can hold gains through year-end (the vol markets are alluding to) -> the ranks of billionaires will surely inflate further. No winners, right ?

This week saw the S&P500, the S&P 400 Mid-Cap Index and the small cap Russell 2000 all trade to record highs. The week's 2.8% advance increased the small caps' year-to-date gain to 31.3%. Google added about 140 points and $38.5bn of market cap this week (to $338bn) to reach an all-time high (up 43% y-t-d). The more speculative "beta" stocks continue to outperform. The NASDAQ 100 (up 3.7% this week), Morgan Stanley High Tech Index (up 2.6%) and The Interactive Week Internet Index (3.4%) all traded to the highest levels since 2000. Treasury, MBS, and corporate debt prices were higher as well. It all adds up.

The QE-enhanced 2013 version of "how crazy do things get?" is outshining even the 1999 speculative melee, yeah!!. The (post-LTCM bailout) year 1999 saw the small cap Russell 2000 Index jump from 422 to 505 (19.7%). This year, it has already run from 849 to 1,114 (up 31.3%). The S&P400 Midcap Index jumped from 392 to 445 in 1999 (13.5%). With more than two months to go, so far it's 1,020 to 1,290 for the midcaps (up 26.5%).

Why stop just at the US. Germany's DAX equities index added 1.6% this week to a new all-time high (up 16.5% y-t-d). Italian stocks jumped 2.1% (up 18.4% y-t-d) and Spanish stocks surged 3.5% (up 22.5%), both to more than two-year highs. Australian stocks gained 1.7% (up 14.5% y-t-d). Despite major economic issues, India's stock market jumped 1.7% this week to within a couple percent of new highs. Stocks jumped 4.2% in Brazil and 4.3% in Argentina. Indonesian stocks rallied 4.5%. Around the globe, most equities markets pushed higher. Fueled by huge ETF flows, total equity mutual fund inflows this past week jumped to a whopping $12.7bn.

You may want to see this -> On a weekly basis, global central bank International Reserve Assets (data from Bloomberg). This data provide a decent proxy for global financial flows, especially to the emerging markets (EM). From $6.63 TN back in April of 2009, International Reserves surged this week to a record $11.415 TN. Reserves have inflated 330% in ten years.

Lets focus on some trades here:
1) This environment is supportive for carry trades, which has been reflected in the outperformance of high yielders following the announcement of the US debt deal.
Long AUD/USD: Longer term investors remain relatively short AUD, which suggests that AUDUSD strength has further to run. A

move above parity is unlikely as the RBA should step in. Therefore buy 2m 0.9750 call against selling 2x 0.9900 calls. The AUDUSD risk reversal looks cheap (calls expensive relative to puts). This suggests selling high-strike calls, either outright for those that do not expect further AUD appreciation or to finance a low-strike call for a short-term carry position.
Long KRW NDF : this trade will benefit should CNY appreciation or band widening expectations gain additional traction
Long USD TRY: the market remains relatively short TRY, and with risk premium in USDTRY declining the most among major currencies, these short positions are likely to be at risk from carry traders.

2) HY vs IG compression trade in Europe: Six weeks of retail outflows from high-grade funds but retail inflows into high-yield funds shows that the compression trade in credit is firmly entrenched in Europe. There is a structural reach for yield and this trade still has some legs. I would however hedge out rate risk and stick with spread risk. I will point out that more than $200bn of "cov-lite" loans have been issued so far this year, more than double the $100bn sold in 2007. The record issuance means that about 56 per cent of new leveraged loans are now cov-lite !!

3) Long Europe small caps: This is a leveraged trade to a European recovery. European small + mid caps have a higher potential for upside. As European economies improve and small to mid cap valuations in the region continue to look attractive, a re-acceleration of sales and earnings at these companies should drive better performance in European small to mid caps versus the US. Investors looking for yield will find higher levels in Europe versus the US with European small to mid caps yielding near 3% versus approximately 1.4% in the US.

4) Long IT stocks: overall IT spend is expected to grow 0.9% in 2014 compared to ~0.7% growth. Corporate spending sentiment now is on the uptick prompting this move. Also keep an eye on data center growth. Demand for data center services is due to, First, technological evolution -> driving up computing density (servers) and utilization rates (virtualization), therefore data center space must constantly evolve to meet power and cooling needs. Second, increased cost consciousness and core competency focus -> driving greater acceptance of data center outsourcing within Enterprise IT departments.

5) Long Italian Banks / Italian Govvies: another leveraged play on the European periphery recovery. Unicredit clearly stands out. UCG will definitely gain from the European banking union theme. There has been recent talk of this year / early 2014 as a point when impaired loan growth may finally subside and I expect a wide range of cost cutting action. Our strategists think "Italy looks attractive in a twin deficits framework and should benefit from improving fiscal and credit impasse, political risk premium should decline", therefore they recommend buying 10y Italy vs Germany at 230bps, targetting a spread at 200bps

6) Euro Inflation floors: In the euro inflation options market, 5y 0% inflation floor prices are close to their lows. This is not consistent with the 5y inflation swap rates which are by themselves close to lows -> meaning deflation is closer-to-the-money. Inflation volatility has collapsed, probably mostly for purely technical reasons as is all other vol !!. Deflation is not anyone's central case, but a "underpriced tail risk". This creates opportunity for those prepared to pay premium for this risk and therefore would recommend buying the charted 5y 0% zero coupon floors at or around the current level of 20c.

7) KOSPI Calls: The KOSPI2 has been trading within a tight range, realizing only 9.8% over the past 30 days, the lowest globally. Low realized vol has capped short-dated implied vol, driving 1m ATM vol to 12.8%, near all time lows. The Index broke out from a tight range last week and investors should consider buying short-dated calls for upside exposure or replace outright longs with calls. The differential between positioning in EM equities and European equities has reached an extreme – worst on record and 2.4 stdev below its 10-year average. Even the NKY 3M ATM vol dropped to an 8-month low !!!

8) UK Banks: On the back of weak FICC earnings across the street, Barclays I feel has hit Rock Bottom. This reflects the sentiment around FICC geared investment banks generally, but also the horrible six months that management has seen. My personal view is that rates + credit will recover in 2014 as tapering will create a steeper curve and volatility. I also think Barclays leverage ratios will improve soon and Barclays will push through an aggressive cost cutting plan.

Quick Macro Snippet:
What should we be focused on: The most important market drivers will now be the 1) US labor market data and 2) Eurozone inflation. An improvement in the former will determine the timing and pace of Fed tapering. A decline in the latter will determine whether the ECB will stay on hold, or loosen policies. The Sep NFP is on Tuesday stay focused.

Gold some technicals - couldn't resist: The bears are still fighting the recent up move, here are some technicals to rebase...
The volatility in gold over the past several days has been impressive. A close above 1330 (Oct-08 high) would be the first sign of basing and a turn higher, while bulls gain control only AFTER a close above 1375 (Sep-19 high). A close below 1270 exposes the Jun-13, bear trend lows of 1180

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Deutsche Asset
& Wealth Management

Blanche Lark Christerson
Managing Director, Senior Wealth Planning Strategist

Tax Topics

12/20/13

2013-12

Budgets, tax reform and "extenders"

As the year winds down, House Budget Committee Chairman Paul Ryan (R-WI) and Senate Budget Committee Chairman Patty Murray (D-WA) have hammered out a budget deal that forestalls – for two years – another government shutdown, and limits some of the forthcoming sequester cuts otherwise slated to go in effect in January. Although neither negotiator is entirely happy with the agreement, both view it as a workable cease-fire in the budget battles; the House passed the agreement 332 to 94 on December 12th, and the Senate passed it 64 to 36 on December 18th. President Obama will sign the bill shortly, thereby making it possible for Congress to draft spending bills so as to allocate the budget dollars that have now been approved. Note, however, that this budget agreement does not address the debt ceiling suspension, which expires in February, and that another fiscal showdown is therefore possible early next year.

As to tax reform, Sen. Max Baucus (D-MT), Chairman of the Senate Finance Committee, has recently put forth several discussion drafts of legislation, generally dealing with corporate and international tax, and energy incentives, while Rep. Dave Camp (R-MI), Chairman of the House Ways and Means Committee, acknowledged that he fell short on his goal of introducing tax reform legislation this year, but that he would rather focus on that than an "extenders" bill.

What is "extenders" legislation, and how might it fit into the tax reform puzzle? Although "extenders" are not defined anywhere, they generally refer to temporary provisions of the tax law that Congress regularly renews – usually for a year or two at a time. For example, the research and development credit is an important business incentive that has been around since 1981 – and is again among the extenders that expire on December 31, 2013 (this year, they number 57). Some of the other extenders on this list are more recent, including the $250 above-the-line deduction for certain out-of-pocket expenses of teachers, the deduction for state and local sales taxes, and the IRA charitable "rollover" provision for taxpayers who are at least 70½.

Why does the tax law have so many temporary provisions? Several reasons come to mind. If a provision was enacted in response to a natural disaster or specific crisis, it is theoretically a short-term measure designed to get taxpayers through a particularly difficult period – such as the expiring extender dealing with mortgage forgiveness. Enacted at the end of 2007 in response to turmoil in the housing market, this provision was designed to help borrowers who were underwater with their home mortgages: previously, if a lender foreclosed on a home and sold it for less than the outstanding indebtedness, the forgiveness of the unpaid balance generated taxable income for the borrower, as did a renegotiated mortgage that reduced the outstanding indebtedness. Under this temporary provision, that forgiveness is not considered income – a welcome result for taxpayers in this unhappy situation.

Yet what about temporary provisions that promote favored tax policies but that don't respond to a particular situation? If they're such a good idea, why not make them permanent? This gets to a basic reality: permanent provisions are more costly than temporary ones. That is because the Joint Committee on Taxation must use a current law "baseline" when it estimates the revenue impact of tax legislation. Such a baseline assumes that a temporary measure, such as the mortgage forgiveness mentioned above, generates only a short-term revenue loss, and will expire as scheduled – even if that is unlikely to occur. This means that such measures can paint a rosier fiscal picture than is perhaps justified, and can therefore be a more "cost-effective" way to continue desired tax benefits (and policies), regardless of how inefficient and counter-productive the resulting uncertainty may be.

These current expiring extenders seem likely to languish – at least for a bit, especially considering that the House has already recessed for the year. Although Congress has often renewed expiring provisions retroactively, such a move early next year could take some of the steam out of tax reform (assuming it has a chance). In addition, despite how inherently worthy these expiring provisions may be, Congress is under less pressure to pass extenders legislation because of the American Taxpayer Relief Act of 2012 (ATRA) (Pub. L. 112-240). That is, in addition to making most of the 2001 and 2003 tax cuts permanent, ATRA, which was enacted on January 2, 2013, made the "granddaddy" of extenders permanent, by permanently indexing the AMT exemption for inflation, thereby permanently sparing over 25+ million taxpayers from the AMT, as opposed to the "mere" 4+ million currently affected by it (recall that the earliest incarnation of the AMT in the late 1960's was in response to 155 taxpayers who paid no income tax through use of permissible credits and deductions).

Tax reform – and extenders – are thus moving targets. Even though Rep. Camp and Sen. Baucus, along with others in Congress, say they would like to address tax reform in 2014, that is a tall order: not only will members of Congress soon be pre-occupied with the November mid-term elections, there is also that small matter of the philosophical divide between Republicans and Democrats – Republicans want tax reform to be revenue-neutral, while Democrats want higher taxes on the top 1% to 2% of taxpayers. Finally, the latest fly in the ointment is that Sen. Baucus, who is not running for re-election in 2014, reportedly will be nominated as the next ambassador to China – meaning that he will not complete his final term in office, assuming he is confirmed. Does this take additional momentum away from the prospect of tax reform in 2014? Arguably yes, although Sen. Ron Wyden (D-OR), who could be Sen. Baucus's successor as Chairman of the Senate Finance Committee, is also interested in tax reform and has previously put forth bipartisan tax reform proposals. It will be interesting to see what develops.

End of the year recap

With the end of 2013 upon us, we wanted to highlight a few of the tax and political developments that stood out to us this year, and that have long-term implications:

ATRA. As mentioned above, the American Taxpayer Relief Act (ATRA) made the AMT "patch" and most of the 2001 and 2003 tax cuts permanent. It also raised taxes on the top 1% to 2% of taxpayers, in part, by bringing back the top income tax rate of 39.6% and, for those at that rate, the 20% rate on qualified dividends and most long-term capital gains. In addition, ATRA reinstated the personal exemption phase-out and what is generally a 3% limitation on itemized deductions, such as for mortgage interest, state and local taxes, and charitable contributions (the exemption phase-out and deduction limitation are colloquially known as "PEP and Pease"). These changes, coupled with the new 3.8% tax on net investment income (see below), may mean an unhappy surprise for many taxpayers on April 15, 2014, when they pay their 2013 income tax liability. On the transfer tax front, ATRA also made permanent the $5 million basic exclusion against the gift and estate tax, along with "portability," which effectively allows a surviving spouse to "inherit" the deceased spouse's unused exclusion. (The exclusion has been indexed for inflation since 2012, and in 2014, will increase to $5.34 million, the same amount as the generation-skipping transfer tax exemption). Finally, ATRA raised the top transfer tax rate from 35% to 40%.

3.8% tax on net investment income. What has come to be known as the "Affordable Care Act" (or ACA, sometimes referred to as "Obamacare") was enacted in two parts in March 2010: the "Patient Protection and Affordable Care Act" (Pub. L. 111-148), and "The Health Care and Education Reconciliation Act of 2010" (Pub. L. 111-152). ACA is a seismic shift in health care insurance and is beginning to be phased in (see below). It has also brought a number of new taxes, including the 3.8% tax on "net investment income," which took effect in 2013. Such income includes interest, dividends, capital gains, royalties and rents; the 3.8% tax on these items can apply if a taxpayer's "modified adjusted gross income" (adjusted gross income plus otherwise excluded foreign income) exceeds certain amounts that are *not* indexed for inflation: $250,000 (married filing jointly), $200,000 (single taxpayers) and $125,000 (married filing separately).

The extensive guidance the IRS has issued on this 3.8% tax is indicative of its complexity. To illustrate, in November 2012, the IRS issued over 150 pages of proposed regulations on the tax (REG-130507-11), and on November 27, 2013, the IRS issued over 300 pages of material: final regulations (T.D. 9644, effective December 2, 2013), along with some new proposed regulations (REG-130843-13) that address areas where guidance had been requested, or that had seemed unduly burdensome to commentators (such as how to calculate gain or loss when disposing of certain partnership or S Corporation property). Additional areas, the IRS has indicated, are reserved for future guidance…and then there are the various questions and answers the Service has issued, along with the explanations it has added to multiple publications that are designed for the general public. Put simply, this is a lot of material for a statute that is barely two pages long!

With the advent of these final regs, the IRS presumably will soon issue instructions for the new Form 8960, where taxpayers will report the 3.8% tax (a draft form was issued this August, but its frequent injunction to "see instructions" meant that taxpayers were still in the dark about how to calculate the tax). Note that if the "kiddie tax" applies to a child's "unearned income" AND the parent elects to report this income as his own, by filing Form 8814, this income will also be part of the parent's "net investment income" for purposes of the 3.8% tax. (The kiddie tax effectively taxes a child's unearned income in excess of $2,000 (the 2013 and 2014 thresholds) at the parent's highest rate.)

***Windsor* and same-sex marriage.** The Supreme Court decided *United States v. Windsor* on June 26, 2013, and held that Section 3 of the Defense of Marriage Act (DOMA) was unconstitutional because it defined "marriage" as only between a man and a woman. On August 29th, Treasury and the IRS issued guidance explaining that, effective September 16, 2013, same-sex married couples are now treated as married for *all* federal tax purposes, regardless of where they live (see, for example, Revenue Ruling 2013-17 and various Q&As on the IRS website: irs.gov). Nevertheless, because Section 2 of DOMA still stands, states are not required to recognize same-sex marriages that were validly celebrated in a different state. Thus, the state tax treatment of a same-sex married couple may differ from the couple's federal treatment, depending on where they live. In other words, complications still abound.

ACA rollout. As mentioned above, the Affordable Care Act (ACA) is being phased in, including the rollout this fall of HealthCare.gov, the government website through which individuals can seek health insurance so as to satisfy the "individual mandate," which requires individuals to procure health insurance by January 1, 2014, or face a penalty. As has been widely reported, the website has had numerous problems, and many individuals who had coverage are now losing it because it apparently doesn't meet ACA's new minimum coverage standards, and therefore won't be renewed. It goes without saying that ACA is bound to be an issue in next year's mid-term elections.

Government shutdown. The 16-day government shutdown in October happened because there was a spending and debt ceiling impasse between Democrats and Republicans. Although Republicans took much of the heat for the shutdown, it nevertheless seemed to reflect badly on everyone in Washington, and had wide-reaching effects, including delaying any number of things that the government needed to do, such as issuing guidance on the 3.8% tax (see above). The shutdown also delayed the start of the 2013 filing season, which the IRS has now announced will begin on January 31, 2014, or about 10 days later than usual (this means that taxpayers who are anticipating a refund – and therefore want to file early – will have to wait a little longer). As mentioned above, the recent budget agreement, which was born of this shutdown, should forestall another one…but another crisis is possible when the debt ceiling suspension expires in early February. Given the public's fury over the shutdown, however, it is hard to believe that Democrats and Republicans won't reach an agreement over the debt ceiling – the mid-term elections next November are not that far away, and voters do have memories!

"Nuclear option." Senate Democrats recently exercised the so-called "nuclear option," so as to limit potential filibusters on presidential executive and judicial nominees (other than those for the Supreme Court). In other words, all presidential nominees who are subject to the Senate's "Advice and Consent" can have their nomination put forth for Senate confirmation on 51 votes, and can't be filibustered, which requires 60 votes to overcome. Needless to say, Senate Republicans are unhappy with this rule change, and warn that Democrats will be even unhappier with it when they (the Democrats) are again in the minority, as will inevitably happen at some point. This move is significant, and may make bipartisan cooperation on immigration and tax reform even more improbable. 2014 will be interesting.

"Permanency." Much of this discussion has referred to "permanent" changes in the tax law, such as how ATRA made the 2001 and 2003 tax cuts permanent, along with the generous $5 million exclusion against gift and estate taxes. But how long a shelf-life do these provisions really have? Here's a thought: they are there until Congress later changes them. In other words, perhaps what separates a temporary provision from a permanent one is whether there's a built-in expiration date – if the provision has one, it's an "extender"; if it doesn't, it's "permanent." And if tax reform actually happens, all bets are off!

December 7520 rate issued

The IRS has issued the December 2013 applicable federal rates: the December 7520 rate remains at 2.0%, where it was in November. December's mid-term rates are as follows: 1.65% (annual), 1.64% (semiannual and quarterly), and 1.63% (monthly), a slight drop from November's midterm rates of 1.73% (annual), 1.72% (semiannual and quarterly), and 1.71% (monthly).

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Tax Topics 2013

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04/09/02	Tax Court denies annual exclusion for gifts of LLC interests (*Hackl*); Florida says goodbye to estate tax revenues	2002-08
03/20/02	Senate Finance Committee hearing on tax shelters; Joint Committee on Taxation report on shelters and judicial doctrines used against them	2002-07
03/15/02	Stimulus bill passes; bill to freeze some of 2001 Tax Act; CBO and OMB revenue projections; Concord Coalition suggestions about fiscal year 2003 budget; GRAT includibility under IRC Sec. 2039 (TAM 200210009); Vermont "decoupling"; the GST and "indirect" skips – the opt-out	2002-06
02/28/02	Tax shelter amnesty (Announcement 2002-2); whither the corporate income tax?; IRS permits early CRUT termination (PLR 200208039) and tax treatment of early termination (PLR 200127023); IRS information on Victims' Relief Bill (Publication 3920); New York City's cigarette tax	2002-05
02/22/02	President Bush's fiscal year 2003 budget; Senate vote on estate tax repeal; the shrinking surplus; increase in debt ceiling; taxability of frequent flyer miles (Announcement 2002-18); cigarette taxes	2002-04

01/31/02	Victims' Relief bill signed – planning points; bill to reinstate marital deduction for non-citizen spouses (H.R. 3575); the state death tax credit and "decoupling": Minnesota, Rhode Island and Wisconsin	2002-03
01/25/02	IRS Notice on split-dollar life insurance (Notice 2002-8)	2002-02
01/11/02	Tom Daschle speech on the economy; 2001 Report of the National Taxpayer Advocate	2002-01

2001

12/21/01	The stimulus package; the Victims of Terrorism Relief Act; inflation-adjusted numbers for 2002	2001-25
11/30/01	More on Victims of Terrorism bill (history of prior such bills); applicability of FICA and FUTA taxes to ISOs (incentive stock options): proposed regulations (REG-142686-01) and Notices 2001-72 and 2001-73; the AMT and ISOs	2001-24
11/26/01	Stimulus package stalls; Victims' Relief bill progresses; 18% capital gains tax rate and gain on principal residence exclusion (Revenue Ruling 2001-57)	2001-23
10/31/01	More thoughts on the Victims of Terrorism relief bill; FICA increase; France and the VAT	2001-22
10/24/01	Stimulus plans; budget shortfalls in California, Florida, New York and North Carolina	2001-21
09/28/01	9/11 aftermath: Victims of Terrorism Relief Act	2001-20
09/04/01	More on "timing" and the new estate tax rates; the phase-out of the state death tax credit	2001-19
08/07/01	AMT ISO relief?; "timing" and the new estate tax rates; the tax rebates	2001-18
08/02/01	Possible repeal of the "sunset" provision and the estate tax; GST "indirect" skips and deemed allocations	2001-17
07/25/01	GST changes under 2001 Tax Act	2001-16
07/10/01	Two unfavorable IRA rulings: sons can't be default "designated beneficiaries" (PLR 2001260410) and daughter can't name herself as Mom's designated beneficiary after Mom's death (PLR 200126036); new IRA rules wouldn't necessarily have made a difference	2001-15
06/29/01	Some of the numbers behind the 2001 Tax Act	2001-14
06/04/01	Rundown on EGTRRA (the 2001 Tax Act)	2001-13
05/22/01	Gifts to non-grantor trusts under the "Relief" bill; Neal tries to shut down swap funds (H.R. 1785)	2001-12
05/18/01	Rundown on the "Relief" bill; the "Byrd rule"	2001-11

04/20/01	Costs of the "Death Tax Elimination" bill; the Joint Committee on Taxation and revenue estimates; estate tax reform bills; Rangel bill would make state and local taxes deductible against AMT	2001-10
04/13/01	The costs of estate tax repeal	2001-09
04/11/01	President Bush's tax proposals, H.R. 8, "The Death Tax Elimination Act of 2000," carryover basis and "dynamic" versus "static" scoring	2001-08
03/23/01	Competing stimulus bills and possible estate tax relief	2001-07
03/07/01	Stimulus bill in the making; IRA hardship exemption fails (*Gallagher)*; tax fraud conviction and sentencing of Dorothy and George Henderson; office space for the Clinton Foundation	2001-06
02/05/01	Projected budget surpluses; President Bush's tax plan; possible estate and gift tax repeal	2001-05
01/30/01	Clarification on new proposed IRA regs	2001-04
01/24/01	Appendix with new IRA distribution period	2001-03
01/22/01	Senate Finance Committee takes shape; new proposed regs on IRA distributions (REG-130477-00 and REG-130481-00)	2001-02
01/10/01	Tax-writing committees take shape; possible tax legislation; IRS loses *Walton* GRAT case; how tax credits lard up the tax code; joint spousal revocable trust wins and loses	2001-01

2000

12/20/00	The $1.3 trillion tax cut; inflation-adjusted numbers for 2001	2000-19
11/29/00	Thoughts on the new faces in Washington; candidates for Chairman of the House Ways and Means Committee	2000-18
11/22/00	The uncertain outcome of the elections; compromise bill on the foreign sales tax regime; standard mileage rates	2000-17
11/17/00	Election outcome unknown, but what the tax-writing committees may look like	2000-16
10/30/00	House passes tax bill, Clinton promises veto; NY streamlines tuition savings plan; FICA increases and Social Security funding	2000-15
10/18/00	Details on 18% capital gains tax rate; deduction and credit for college tuition; conviction of Dorothy and George Henderson for tax fraud	2000-14
10/02/00	H.R. 1102, the "Retirement Security and Savings Act of 2000"; estate tax update	2000-13

09/15/00	Override on “marriage penalty” veto fails; Republican edge in House narrows;“surviving spouse” in same-sex relationship loses 50% co-ownership argument (*Estate of Horstmeier*); credit for tax on prior transfers doesn’t fly (*Estates of Harrison*); Gov. Jesse Ventura on Minnesota public school education	2000-12
09/08/00	Override on estate repeal veto fails; final GRAT regulations issued (T.D. 8899, 26 CFR Part 25); settlement fees and tax apportionment (*Estate of Esther Brabson*); dependency exemption for kidnapped child (ILM 200034029)	2000-11
08/07/00	Strategies for passing tax reform; New Hampshire upholds inheritance tax	2000-10
07/14/00	Thoughts on possible estate tax repeal; New Hampshire House overrides inheritance tax repeal veto; the problem of joint-ownership (PLR 200034029); draft legislation to permit fair market value deduction for charitable contributions by artists and authors (S. 2781)	2000-09
06/29/00	Projected surpluses; estate tax repeal movement	2000-08
06/09/00	New Hampshire governor vetoes inheritance tax repeal; IRS ruling on a “5 & 5” power: ever-increasing ownership of the trust (PLR 200022035); IRS wins two cases: gifts to a corporation don’t qualify for annual exclusion (*Stinson*); “economic benefit” doctrine doesn’t accelerate taxability of lottery winnings (*Thomas*)	2000-07
05/19/00	H.R. 8 and estate tax repeal; embezzled money is taxable income (*Amini*); no “married filing jointly” available for taxpayer in same-sex relationship (*Mueller*)	2000-06
05/15/00	Estate tax valuation of a disputed claim: *Estate of Algerine Smith. Commissioner* – 5th Circuit reverse Tax Court	2000-05
04/13/00	IRS goes after “ghoulish” charitable lead trusts (REG-100291-00; new tax shelter listings apply to individuals as well as corporations; IRS permits disclaimer to change IRA beneficiaries (PLR 200013041); community property IRA distribution to ex-spouse taxable to IRA owner (*Bunney*); charitable bequest of non-qualified stock options taxable to charity, not estate (PLR 20012076)	2000-04
03/24/00	Donees subject to transferee liability (*Armstrong*); converting NIM-CRUTs to CRUTs (Notice 99-31); discharge of GRAT liability (TAMs 200010010 and 200011005)	2000-03
02/28/00	Corporate tax refunds are up; taxpayer wins Texas partnership case (*Elsie Church v. United States*)	2000-02
0/11/00	President Clinton’s final budget (fiscal year 2001); attempted casualty loss for property next to O.J. Simpson’s estate (*Chamales*)	2000-01

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Date: Monday, January 13 2014 08:14 PM
Subject: mission acomplished for some
From: Boris Nikolic <[redacted]>
To: Jeffrey Epstein (jeevacation@gmail.com) <jeevacation@gmail.com>;

Philanthropy – Full text articles

Revealed: the world's most admired people
Stephan Shakespeare **– Times**

Bill Gates is the most admired person in the world, according to a global survey for The Times by YouGov. The man who many see as responsible for the democratisation of computing and who is the biggest activist philanthropist across the globe is highly regarded everywhere.

In his home, America, he ranks only 5th, behind Pope Francis, President Obama, Billy Graham, and George W. Bush. Mr Obama and the Pope have a strong lead in Western nations but Mr Gates is highly regarded in every country polled, from Brazil to Egypt, Nigeria to Indonesia, Britain to Russia to Australia. He tops the poll in China — as respondents there said: "He got into a good university, but gave up studying to start his business. He has become a rich man despite dropping out of school . . . He has a successful career and a caring heart — he is ordinary, but great."

The Queen came highest in Britain and second in Australia, but didn't make the Indian top ten. Nevertheless she is the most admired woman in the world, in 17th place, closely followed by Angelina Jolie and Oprah Winfrey.

Half of the top ten admired in Russia are women, including the pop singer Alla Pugacheva and the Queen. That is the highest figure in all countries surveyed — women are strikingly under-represented.

Some light is shed on this by comparing our results with a recent Gallup poll in America, which asked for most admired man and woman in separate questions. In that poll, Bill Clinton scored 2 per cent and Hillary Clinton 15. YouGov asked a single question, not differentiating men and women, and the two Clintons rated about the same. The two polls also show the power of the media to direct public attention: Gallup polled early in December, and Pope Francis was "most admired" by only 4 per cent. By the time of the YouGov survey, Time magazine had made him its Person of the Year, and he shot up to 21 per cent.

Business leaders did well in general. YouGov puts Sir Richard Branson 4th in Britain, the Hong Kong billionaire Sir Li Kashing was sixth in China; the Nigerian industrialist Aliko Dangote was third in his home country; Silvio Santos, a media billionaire, was 4th in Brazil; Mikhail Khodorkovsky, the tycoon recently freed by Vladimir Putin, was 8th in Russia; while Warren Buffett, who is admired in India, Pakistan and China, was 8th in the world.

Actors and musicians do less well. With the exception of the Bollywood superstar Amitabh Bachchan, Ms Jolie and Stephen Fry, who confirms his enormous Twitter following by making 7th in Britain, just below Desmond Tutu. Johnny Depp and Brad Pitt get close to the top in a couple of countries and Justin Bieber did well in Indonesia, but the rock star and anti-poverty campaigner Bono is notable by his absence.

Sportsmen were more highly regarded, with the Indian cricketer Sachin Tendulkar 5th in the world — but only because he is so adored in the world's second-most populous country. The footballer Lionel Messi had broader support, reaching 15th in the world. In Britain, David Beckham squeaked into 10th place.

In only two countries of the 13 surveyed did no local politician make it into the top ten — Australia and the UK. The omission was most striking in Britain where Nigel Farage, the top politician, was in 16th place. David Cameron received the "most admired" accolade from only two people in a thousand. In Germany, Angela Merkel scored 65 times higher at 13 per cent, second only to the Pope. Vladimir Putin topped the Russian poll with a whopping 24 per cent, Nicolas Sarkozy was third in France and Goodluck Jonathan 8th in Nigeria. Edward Snowden, responsible for leaking classified documents that revealed the extent of surveillance by America's National Security Agency, was 10th most admired in the country that granted him asylum, Russia. He also showed strongly in Germany. We also asked who was the most famous person in the world. The overwhelming choice was Mr Obama, with 26 per cent, and Mr Gates behind on 12.

YouGov polled in Great Britain, France, Germany, Russia, the US, Australia, Pakistan, Indonesia, India, China, Egypt, Nigeria and Brazil, representing over half of the world's population and the most populated country on each continent, and spoke to total of 13,895 people around the world. We used a mix of internet and mobile phone surveys. In most countries we achieved representative samples but in some we were unable to achieve good representation of rural communities. Our survey asked two open-ended questions, seeking write-in answers: who do you think is the most famous person in the world, and who do you personally most admire?

Although we specified that only living people should be considered, many wanted to choose Nelson Mandela anyway, and had we conducted the survey a month earlier he would have come top. In China there was significant support for Mao Zedong, Zhou Enlai and Deng Xiaoping, with 14 per cent between them, and had those respondents considered only the living, Xi Jinping would have scored even more highly.

Who's Who
- Narendra Modi, an Indian politician, is the prime ministerial candidate of the BJP, the main opposition party.
- Amitabh Bachchan is a Bollywood superstar, who was the "angry young man" of Hindi cinema.
- Abdul Kalam is an Indian scientist and was president of his country 2002-07.
- Anna Hazare held a series of hunger strikes in India in a successful campaign for anti-corruption laws.
- Arvind Kejriwal is the Chief Minister of Delhi, and worked alongside Hazare.
- Peng Liyuan, a Chinese folk singer, is the wife of President Xi Jingping.
- The philanthropist Abdul Sattar Edhi founded the Edhi Foundation, the largest welfare organisation in Pakistan.
- Joko 'Jokowi' Widodo, the governor of Jakarta, is a populist leader who may run in the 2014 Indonesian presidential election.

Stephan Shakespeare is CEO of YouGov.

From: Paul Morris [[redacted]]
Sent: 3/14/2014 10:27:39 PM
To: Jeffrey Epstein [jeevacation@gmail.com]
Subject: Re: Oil options [C]
Attachments: graycol.gif

Importance: High

Classification: Confidential

I do want to talk to u about this, they spent too much thinking about options here, let me know when u have couple minutes.

Vinit Sahni

----- Original Message -----
From: Vinit Sahni
Sent: 03/13/2014 09:47 PM EDT
To: jeevacation@gmail.com
Cc: Paul Morris
Subject: Fw: Oil options
Classification: External Communication

Jeffrey - apologise if this long to execute next time we'll be much quicker.
Nav Gupta

----- Original Message -----
From: Nav Gupta
Sent: 03/12/2014 09:35 PM GDT
To: "jeevacation@gmail.com" <jeevacation@gmail.com>
Cc: Tazia Smith; Paul Morris/db/[redacted]; Vinit Sahni/db/[redacted]
Subject: Oil options
Jeffrey

Just got off the phone with Vinit.
DB stopped marketmaking OTC oil options - for short dated I'd go for exch traded - better liquidity and lower transaction costs in and out.

My central scenario - Kerry Lavrov meeting Friday will be a bust and the Crimea referendum this weekend will result in "yes" given the 59pct ethic Russian makeup. Sunday/ Monday sanction rhetoric from ranging from g8 expulsion to Iran-style bank embargo is raised a notch. Russia follows with more threats of counter-sanctions. My sense is the Obama 5m of 696m SPR release is to show Merkel and co he will step in. He needs to because there are 8 small European and Baltic countries that rec 70%+ of their gas from Russia. Germany gets 30%.

Cross asset correlations outside of the US are increasing past few days - eg copper and the Turkish lira hourly charts are on top of each other past 4 days. I'm worried there is a 30-40pct(?) chance of a hard risk off move in markets in first half of next week - more focused on European equities, copper, EM FX (Turkey, ZAR, Ruble etc) than SPX. In that scenario oil is way up.

Exchange WTI calls - there are 2 options (as of 3pm est):

5day expiry 17march 2014 underlying clj4 97.92
and
35d expiry 16april2014 underlying clk4 97.59

** The 5 day options are a bit short - one possibility is sell a 3usd out of the money put (95.5 strike) for 20cents and buy a 2usd OTM 100 call for 25. Net pay 5cents. But 5d is a bit short for me.

**For 35d expiry You could look at selling 91.50 (6usd OTM put) for 56cents and buying 103c (5.5usd OTM) for 58cents or the 102c (4.5usd OTM) for 76cents.

CL1 <comdty> OMON on Bloomberg has live strikes and bid/ask.

If 5d is too short and 35d is too long / not enough gamma, Tazia may be able to source liquidity from the street. Am Cc'ing her for any live pricing or additional comment

Best
Nav
[redacted]c
h

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From: Darren Indyke [[redacted]]
Sent: 3/1/2012 3:54:12 AM
To: Jeffrey Epstein [jeevacation@gmail.com]
Subject: Fwd: front page of foxnews.com right now!! - Look at this!

Importance: High

Sent from my iPhone

Begin forwarded message:

From: Erika Kellerhals <[redacted]>
Date: February 29, 2012 10:41:17 PM EST
To: "[redacted]" <[redacted]>
Subject: Fwd: front page of foxnews.com right now!! - Look at this!

Sent from my iPhone

Begin forwarded message:

From: "William L. Blum" <[redacted]>
Date: February 29, 2012 10:26:26 PM EST
To: "[redacted]" <[redacted]>, Erika Kellerhals <[redacted]>, "Edward B. Reynolds, Jr." <[redacted]>
Subject: Fwd: front page of foxnews.com right now!! - Look at this!

Did you guys see this?

Bill

Sent from my iPhone

Begin forwarded message:

From: Justin Blackhall <[redacted]>
Date: February 29, 2012 10:06:39 PM EST
To: "William L. Blum" <[redacted]>, "Robert A. Solomon" <[redacted]>
Subject: front page of foxnews.com right now!! - Look at this!

http://www.foxnews.com/politics/2012/02/29/obama-bundler-works-as-virgin-islands-tax-adviser/

Justin B. Blackhall
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Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

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May 2012

J.E. CASCADING GRAT & INSTALLMENT SALE ANALYSIS

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Investment products: Not FDIC insured • No bank guarantee • May lose value

Please see important information at the end of this presentation.

J.P.Morgan

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A sale to an IDGT is a tax-efficient way to transfer future appreciation of an asset

Intentionally Defective Grantor Trust ("IDGT")

- Grantor makes arm's length sale of assets to an irrevocable trust
- Grantor receives a note for the fair market value of the asset plus interest at current AFR
- Grantor pays income taxes generated by trust assets
- After the note is paid, remaining trust assets pass to heirs gift tax free
- Additional considerations
  - trust should be "pre-funded" by grantor to provide sufficient coverage for the note
  - having the loan guaranteed by trust beneficiaries may be beneficial
  - advisable to allocate GST exemption to trust in order to maximize benefit to heirs

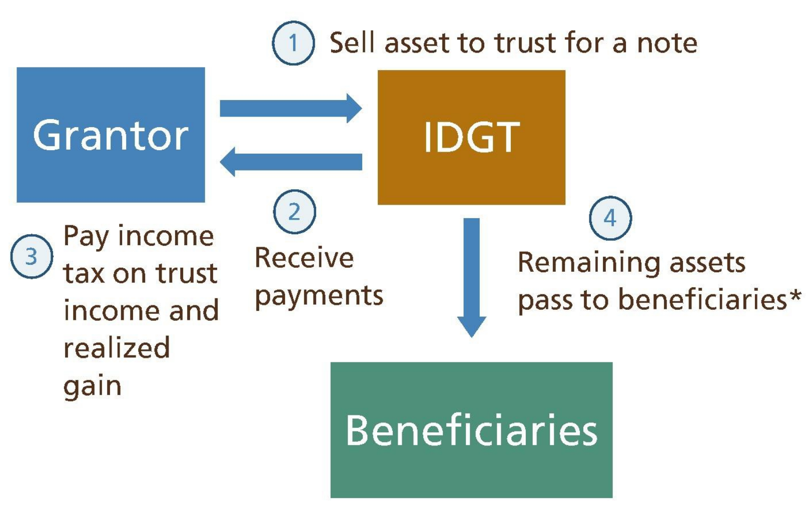
How a sale to an IDGT works

① Sell asset at fair market value to the trust in return for a promissory note bearing interest at proper AFR* based upon term of loan

② Receive payments satisfying terms of note

③ Pay income tax on trust income and realized gain

④ After note is paid off, remaining assets in trust are available, free of gift tax, for beneficiaries**



Grantor

IDGT

Beneficiaries

① Sell asset to trust for a note

② Receive payments

③ Pay income tax on trust income and realized gain

④ Remaining assets pass to beneficiaries*

To enhance the potential benefits consider funding a series of cascading GRATs – the remainders can be added to the IDGT

If the cascading GRATs are successful, at the end of the cascading GRAT terms additional assets can be sold to the IDGT

---

* AFRs are defined as: 1) short-term - not over three years; 2) mid-term - over three, but not over nine years; 3) long-term - over nine years.

** If Grantor dies before note is satisfied, the fair market value of the note is includible in grantor's estate.

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A “Cascading GRAT” strategy enhances the benefits of a GRAT

- The “Cascading GRAT” strategy uses a GRAT’s annuity stream to fund subsequent short-term GRATs
  - annual reinvestment of annuity stream enhances potential value for beneficiaries

- Multiple short-term GRATs allow you to take advantage of market volatility
  - shorter terms permit market “spikes” to be captured immediately

- Short-term GRATs enable you to better manage mortality risks
  - if grantor dies during term of trust, the assets in the GRAT are included in the estate
  - grantor has greater probability of surviving a shorter term

How a "Cascading GRAT" strategy works

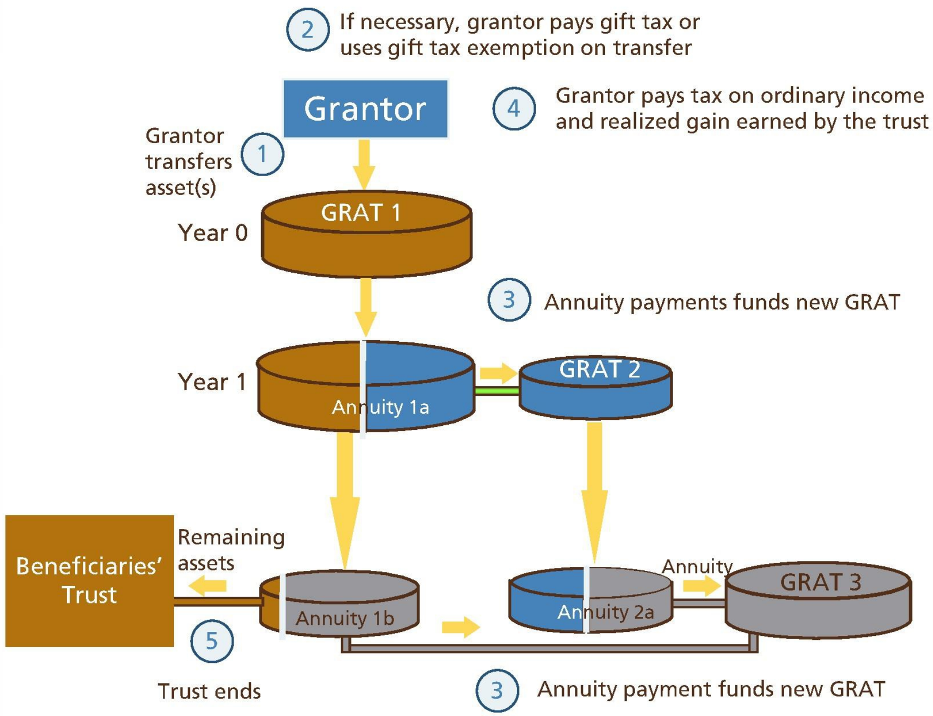
① Grantor transfers asset(s) to an irrevocable trust. Grantor may manage GRAT assets as trustee.

② Grantor pays little or no gift tax, or uses gift tax exemption*, on present value of trust remainder**

③ Annuity payments from existing GRATs fund a new GRAT

④ Grantor pays tax on ordinary income and realized gain earned by the trust (but not on annuity amount transferred from trust to grantor)

⑤ When trust term ends, remaining trust assets pass to beneficiaries free of gift tax
- if grantor does not survive the term, trust assets are included in the estate and subject to estate tax


② If necessary, grantor pays gift tax or uses gift tax exemption on transfer
Grantor
④ Grantor pays tax on ordinary income and realized gain earned by the trust
Grantor transfers asset(s) ①
Year 0
GRAT 1
③ Annuity payments funds new GRAT
Year 1
Annuity 1a
GRAT 2
Beneficiaries' Trust
Remaining assets
Annuity 1b
Annuity 2a
Annuity
GRAT 3
⑤
Trust ends
③ Annuity payment funds new GRAT

---

*Gift tax exemption in 2012 shelters up to $5,120,000 per individual of value transferred from gift tax.

**Calculation based on Treasury discount rate in effect at time of funding GRAT. A recent Tax Court decision (Walton v. Commissioner, 115 T.C. No. 41 (Dec. 22, 2000)) allows GRAT to be "zeroed out," eliminating the need to incur any gift tax.

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Economic flows of Cascading GRATs

Example	
Value of initial transfer to GRAT	$50,000,000
IRS discount rate	1.60%
Number of GRATs	4
Length of strategy	5 years
Annuity rate	51.20%
Escalating annuity percentage	0%
Term of individual GRATs	2 years
Future IRS discount rate	1.60%

Note: Assumes grantor survives all GRAT terms

Note: Model does not include income taxes; the ongoing income taxes generated by the trust are paid by the grantor, income tax implications should be carefully considered

Note: Model assumes all annuity payments are made in cash

Pre-tax annual return of asset	
Year	**Return**
1	15.00%
2	15.00%
3	15.00%
4	15.00%
5	15.00%

	GRAT First Year			GRAT Second Year		
GRAT #	**FMV**	**Appreciation**	**Annuity**	**FMV**	**Appreciation**	**Annuity**
1	50,000,000	7,500,000	(25,601,587)	31,898,413	4,784,762	(25,601,587)
2	25,601,587	3,840,238	(13,108,825)	16,333,000	2,449,950	(13,108,825)
3	38,710,413	5,806,562	(19,820,960)	24,696,014	3,704,402	(19,820,960)
4	32,929,786	4,939,468	(16,861,096)	21,008,158	3,151,224	(16,861,096)

	Beneficiary's trust reinvests remainders			Grantor reinvests annuities		
Year	**Balance**	**Inflows**	**FMV**	**Balance**	**Inflows**	**FMV**
1	0	0	0	0	0	0
2	0	11,081,587	11,081,587	0	0	0
3	12,743,825	5,674,124	18,417,950	0	0	0
4	21,180,642	8,579,456	29,760,099	0	36,682,056	36,682,056
5	34,224,114	7,298,286	**41,522,399**	42,184,364	16,861,096	59,045,460

Numbers have been rounded for convenience, are only estimates for illustrative purposes and should not be relied upon. Corporate insiders should consult with securities counsel as to any reporting issues under Section 16 of the Securities Exchange Act of 1934 associated with receiving shares in-kind.

Note: Above example is for illustrative purposes only. These materials should not be construed as providing legal, tax or accounting advice. GRATs involve complex tax and, in the case of insiders, securities laws issues that should be discussed with your own advisors and company counsel. Annuity will be paid for full term to the grantor or, in case of the grantor's death, to the grantor's estate. Calculation is based on 2000 Tax Court ruling in Walton v. Commissioner (115 T.C. No. 41 (Dec. 22, 2000).

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Economic flows of IDGT*

Example - Initial Funding	
Total assets transferred to trust	$69,285,714
Valuation discount	30%
Valuation of assets for gift tax purposes	$50,000,000
Seed capital/coverage	$5,000,000
Trust term	20 years
Lifetime gift tax exemption applied	$5,000,000
Gift tax paid	$0
Applicable interest rate (AFR)	2.89%
Annual interest payment on note	$1,300,500
Note face value (year 20 balloon payment)	$45,000,000

Additional funding in year 5 from cascading GRATs	
Assumed assets in trust at the end of year 5	$91,799,393
Additional assets from GRATs	**$41,522,399**
Additional note (9:1 leverage)	$373,701,591
Initial note outstanding face value	$45,000,000
Total outstanding notes	$418,701,591
Remaining note term	15 years
Lifetime gift tax exemption applied	$0
Gift tax paid	$0
Applicable AFR	2.89%
Annual interest payment on notes	$12,100,476

Assumptions

- The arithmetic return of assets = 15%; of which ordinary income/short term capital gains = 15%
- Income tax rate used for majority of analysis = 48.4% (Federal = 39.6%, New York City = 8.33%, Medicare = 3.8%)
- Capital gains tax rate used for majority of analysis = 28.8% (Federal = 20%, New York City = 8.33%, Medicare = 3.8%)
- Income and capital gains tax rates adjusted in early years to reflect current law
- Assumes note payments are satisfied using yield first, then seed capital, and finally other assets. If a valuation discount is specified, a pre-disount value is used

Year	Return (asset and seed capital)	Interest and principal payments on note	Trust Value (pre-discount)
0			69,285,714
1	10,392,857	1,300,500	78,378,071
2	11,756,711	1,300,500	88,834,282
3	13,325,142	1,300,500	100,858,924
4	15,128,839	1,300,500	114,687,263
5	**17,203,089**	**1,300,500**	**705,971,667***
6	105,895,750	12,100,476	799,766,941
7	119,965,041	12,100,476	907,631,507
8	136,144,726	12,100,476	1,031,675,757
9	154,751,364	12,100,476	1,174,326,644
10	176,148,997	12,100,476	1,338,375,165
11	200,756,275	12,100,476	1,527,030,964
12	229,054,645	12,100,476	1,743,985,132
13	261,597,770	12,100,476	1,993,482,426
14	299,022,364	12,100,476	2,280,404,314
15	342,060,647	12,100,476	2,610,364,485
16	391,554,673	12,100,476	2,989,818,682
17	448,472,802	12,100,476	3,426,191,008
18	513,928,651	12,100,476	3,928,019,183
19	589,202,878	12,100,476	4,505,121,585
20	675,768,238	430,802,067	4,750,087,756
Return to grantor (nominal)		606,711,231	
Net trust amount			**4,750,087,756**

* Analysis assumes that at the end of year 5 the $41,522,399 cumulative remainder of cascading GRATs from the previous page is used as seed capital for another note at 9:1 leverage used to purchase $373,701,591 of assets at a 30% discount using today's long-term AFR of 2.89%

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A sale to an IDGT results in greater value for heirs than if the asset were held outright

Cash flow example:

		Scenario 1	Scenario 2: Sell asset to IDGT		
Year		**Hold asset**	**Grantor**	**Cost of taxes**	**Trust**
0	Asset held/sold to trust*	$64,285,714			$64,285,714
	Coverage	5,000,000			5,000,000
	Gift tax on coverage			-	
5	Assets from initial funding	100,544,702	7,570,535	(37,615,685)	130,589,853
	Assets from cascading GRATS	72,558,032	59,045,460	(28,009,827)	41,522,399
	Assets held/sold to trust**	533,859,416			533,859,416
20	Value of assets	2,066,664,527	763,711,690	(3,447,134,919)	4,750,087,756 [1]
	Estate tax***	(1,136,115,490)	(420,041,430)	1,895,924,205	-
	Net wealth to beneficiaries	930,549,037	343,670,261	(1,551,210,713)	4,750,087,756
	Total value to beneficiaries	$930,549,037		$3,542,547,303	
	Value added by IDGT		**$2,611,998,266**		

1. Assets do not receive a step up in basis upon death

* Value shown is prior to assumed valuation discount of 30%, the value of assets for gift tax purposes is assumed to be $45,000,000

** Value shown is prior to assumed valuation discount of 30%, the value of assets for gift tax purposes is assumed to be $373,701,591

*** In scenario 1 an estate tax exemption of $1,000,000 is applied. This is the lesser of the $5,000,000 gift tax exemption applied to scenario 2 and the $1,000,000 applicable estate tax exemption in year 20

Assumptions: The arithmetic return of asset years 1-20=15%;of which ordinary income/short term capital gains = 15%;interest rate paid to grantor = 2.89%; annual interest payment=$1,300,500; valuation discount = 30%; transfer tax rate (for transfers at the end of year 20) = 55%.

Numbers have been rounded for convenience, are only estimates for illustrative purposes and should not be relied upon. Corporate insiders should consult with securities counsel as to any reporting issues under SEC Section 16 of the Securities Exchange Act of 1934 associated with receiving shares in-kind.

Note: These materials should not be construed as providing legal, tax, or accounting advice.

On June 7, 2001, President Bush signed into law the Economic Growth and Tax Relief Reconciliation Act ("EGTRRA") which significantly changed estate, gift, and generation-skipping transfer taxes. On December 17, 2010, President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization and Jobs Creation Act of 2010, which institutes estate, gift, and GST taxes at 35% with a $5MM exemption for 2011 and 2012 (adjusted for inflation), after which rates and exemptions will return to pre-EGTRRA levels.

NOTE: Analysis assumes that at the end of year 5 the $41,522,399 cumulative remainder of cascading GRATs from page 5 is used as seed capital for another note at 9:1 leverage used to purchase $373,701,591 of assets at a 30% discount using today's long-term AFR of 2.89%

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From: Paul Morris [redacted]
Sent: 4/30/2013 6:57:28 PM
To: jeevacation@gmail.com
Subject: Fw: Tax Topics
Attachments: Untitled attachment 144206.gif; Untitled attachment 144209.gif; apr29tx13.pdf

Importance: High

Classification: Public

Paul Morris
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----- Forwarded by Paul Morris/db/dbcom on 04/30/2013 02:56 PM -----

From: Blanche Christerson [redacted]
To:

Date: 04/30/2013 02:55 PM
Subject: Tax Topics

Classification: Public

Attached is the latest edition of *Tax Topics*. It discusses some of the tax proposals in President Obama's Fiscal Year 2014 Budget, which was released on April 10th. It also has the 7520 rate and the applicable federal mid-term rates.

...three cheers for spring!

Blanche Lark Christerson
Managing Director

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Blanche Lark Christerson
Managing Director, Senior Wealth Planning Strategist

Tax Topics

2013-05

04/29/13

Fiscal Year 2014 Budget issued

On April 10th, President Obama issued his Fiscal Year 2014 budget. Shortly thereafter, the Treasury Department issued its "Green Book," which explains the tax provisions in the budget. Although most of these provisions are familiar and have appeared in previous budgets, a few were new. Here is a selected overview of some of these provisions, most of which would apply (assuming Congress enacts them) as of 2014:

- **Limit the value of certain tax benefits.** As in previous budgets, the current budget proposes to limit the value of various tax benefits so that they only reduce or shelter income that would be taxed at 28% or less. In other words, taxpayers with income that would be taxed at the 33%, 35% or 39.6% rate would see tax benefits curtailed, including ALL itemized deductions (these include deductions for mortgage interest, charitable contributions and state and local taxes), tax-exempt municipal bond interest, employer and employee contributions to employer-sponsored health insurance, employee contributions to retirement plans such as 401(k)s, contributions to health savings accounts and Archer medical savings accounts, interest on education loans and certain higher education expenses. Because an affected taxpayer's pre-tax contribution to her retirement account would be taxed, the account's "basis" would be increased accordingly.

  Comments. This proposal is not new, but the basis adjustment for retirement accounts is an equitable provision that was previously missing. Also, because the proposal would apply to income that is taxed at 33%, 35% or 39.6%, it would increase taxes on some of those President Obama has previously pledged to insulate from higher taxes – namely, individuals with income under $200,000 or married couples filing jointly with income under $250,000. That is, in 2013, the 33% tax rate applies to taxable income in excess of $183,250 (single taxpayers), $203,150 (head of household) and $223,050 (married filing jointly).

- **The "Buffett Rule."** To limit the advantage that high-income taxpayers enjoy from the preferential low rates on dividends and long-term capital gains, the budget proposes the "Fair Share Tax" (FST), a new minimum tax designed to ensure that taxpayers pay at least 30% on their adjusted gross income (AGI) (a credit for charitable contributions would be allowed). Translated, this means that if the taxpayer's "regular" taxes (including certain credits, the alternative minimum tax and the new 3.8% surtax on net investment income) and payroll taxes didn't reach 30%, the FST would make up the difference. The FST would be phased in starting at $1 million of AGI, and would be fully phased in at $2 million of AGI (these thresholds would be indexed for inflation as of 2015).

Comments. Taxpayers who already pay an aggregate 30% in regular and payroll taxes would not be subject to the FST – but those who chiefly have income from qualified dividends and long-term capital gains (and therefore have lower than a 30% effective rate) would see a significant tax increase.

- **Restore the 2009 transfer tax parameters.** Beginning in 2018, the transfer tax provisions that were in effect in 2009 would be restored. The top transfer tax rate would thus be 45% instead of 40%; the estate tax exclusion and generation-skipping transfer tax (GST) exemption would be $3.5 million, and the gift tax exclusion would be $1 million (these amounts would *not* be indexed for inflation). In computing gift or estate tax liability with respect to these reduced exclusions, taxpayers would not be affected by "clawback." That is, they wouldn't be subject to additional tax if they had taken advantage of the previous (higher) exclusion amounts (in 2013, the applicable exclusion amount (AEA) against gift and estate tax is $5.25 million, and is indexed for inflation; the GST exemption equals the AEA). "Portability," which allows a surviving spouse to effectively "inherit" the deceased spouse's unused AEA, would continue.

  Comments. Despite President Obama's urging to the contrary, the American Taxpayer Relief Act of 2012 (ATRA), enacted on January 2, 2013, made permanent most of the transfer tax provisions that were in effect in 2011 and 2012: a $5 million exclusion amount, indexed for inflation, against gift and estate taxes and GST, and portability. (ATRA increased the top transfer tax rate from 35% to 40%.) In other words, Congress just "permanently" stabilized transfer taxes, and is probably not eager to revisit them anytime soon. Yet the budget proposes relitigating the issue, and reverting to the 2009 regime – but not until 2018. Perhaps this is more protest than blueprint.

- **Require consistent basis for transfer tax and income tax.** The basis of inherited property would have to equal the property's estate tax value, and the basis of property received by lifetime gift would have to equal the donor's basis. Although these are, in fact, generally the current rules, the proposal would require executors of estates and donors of lifetime gifts to report the property's value and basis to both the recipient and the IRS.

- **Require a minimum term for Grantor Retained Annuity Trusts (GRATs).** To limit the effectiveness of GRATs, which are designed to pass potential appreciation at little or no gift-tax "cost," GRATs would be required to have: 1) a minimum term of 10 years and a maximum term of the annuitant's life expectancy plus 10 years; 2) at least some gift at the trust's creation (i.e., no more "zeroed-out" GRATs); and 3) no declining annuity during the trust's term.

- **Limit the duration of the GST exemption.** A trust that is protected from generation-skipping transfer tax would lose that protection after 90 years, when GST would again apply to the trust.

- **Coordinate income and transfer tax rules regarding grantor trusts.** The grantor of a "grantor trust" is responsible for paying the trust's income taxes. Such trusts are often includible in the grantor's estate (as in a "revocable trust" or a GRAT). A trust that is *not* includible in the grantor's estate but for which the grantor is responsible for paying the income taxes is a "defective" grantor trust. Transactions between the grantor and his grantor trust are not recognized for income tax purposes, so that if, for example, the grantor sells appreciated property to a defective grantor trust in exchange for an interest-bearing note – known as a “sale to a defective grantor trust” – the sale does not trigger capital gains taxes and the grantor is not taxable on the trust’s interest payments to him. Such transactions can pass significant potential appreciation to the grantor’s heirs free of gift tax and generation-skipping transfer tax.

To eliminate this planning technique, the proposal provides that if the deemed income tax owner of a trust (this could be the grantor or a beneficiary) “engages in a transaction with that trust that constitutes a sale, exchange, or comparable transaction,” then the portion of the trust attributable to this transaction (along with income or appreciation on the property): 1) would be includible in the deemed owner’s estate; 2) would be subject to gift tax if the deemed owner ceased to own the trust during life; and 3) would be treated as a gift from the deemed owner if, during the owner’s life, distributions were made from the trust to another person. Any gift or estate tax triggered by the proposal would be payable from the trust. The proposal would not apply to trusts that are already includible in the grantor’s estate, “rabbi trusts” (non-qualified deferred compensation plans that are subject to claims of the grantor’s creditors) or trusts that are grantor trusts solely because the trust’s income can be used to pay insurance premiums on the life of the grantor or the grantor’s spouse (i.e., insurance trusts that are designed to remove insurance proceeds from an insured’s estate).

Comments. Last year was the first appearance of this proposal to unify income and transfer tax rules for grantor trusts. It was so broadly worded that it would have caught existing trusts, such as insurance trusts. This new iteration simply targets sales to defective grantor trusts.

- **Extend the lien on estate tax deferrals.** The tax law allows the estate tax on certain closely held business interests to be deferred for up to 15+ years from the decedent’s death. Another provision of the tax law imposes what is generally a ten-year lien on the estate’s assets to ensure payment of the estate tax. Because that lien can expire before the estate tax is paid, it may be difficult for the IRS to collect those tax dollars. The proposal would extend the lien through the permitted deferral period.

- **Clarify the GST treatment of “HEETs.”** Donors can make direct payments of tuition and medical expenses free of gift tax. If that donor is a grandparent, for example, such payments are also free of generation-skipping transfer tax. Specifically, the tax law provides that the GST will not apply to “any transfer which, if made inter vivos by an individual [i.e., during the donor’s life], would not be treated as a taxable gift” because it is a direct payment for tuition or medical expenses. This language has been read to mean the following: GST will not apply to a trust’s direct payments for, say, a grandchild-beneficiary’s tuition or medical expenses, even though the trust is otherwise subject to GST.

  Some planners have taken this understanding a step further with “HEETs,” or Health and Education Exclusion Trusts. These trusts purportedly are fully protected from GST, despite not having any GST exemption allocated to them. That is, because charity has an ongoing “substantial” income interest in the HEET (say, 10%), gifts into the trust are not subject to GST, and GST won’t apply when one generational level of beneficiaries dies off. In addition, trust distributions on behalf of beneficiaries such as grandchildren can only be made for tuition or medical expenses, and are therefore GST-exempt. The proposal says that it would “clarify” that this GST exclusion for direct payments of tuition or medical expenses only applies to payments made by a *living* donor, and not from a trust. The proposal would apply to trusts created after the bill proposing this change is introduced in Congress, and to transfers after that date made to pre-existing trusts.

  Comments. The desire to "clarify" this special exclusion reflects the perception that HEETs are abusive, given the proposal’s recommended effective date (introduction, rather than enactment, of legislation). Despite this perception, however, it is worth noting that trusts that typically take advantage of direct payments for tuition and medical expenses *are* subject to GST but for this special exclusion. Also, although HEETs have been written about in planning publications, it is unclear how often they are actually implemented: donors who use their GST exemption for multi-generational trusts often feel that they've done "enough" for those lower generations, and may lack the charitable intent necessary for the HEET to work. In addition, given life's uncertainties, trust creators may be reluctant to limit trust distributions to tuition and medical expenses only.

- **Tax "carried" (profits) interests as ordinary income.** In exchange for their services on behalf of hedge funds and private equity funds, managers of these entities are often compensated with what are called "carried interests," or profits from the entity. Because these profits interests are structured as partnership interests, they pass through long-term capital gain to the partners/managers, and are therefore taxed at preferential rates. The proposal would not recharacterize the treatment of a partner's *investment* in the entity, but would tax as ordinary income what is viewed as compensation for the partner's investment management services for the partnership. Thus, a partner's share of income in an "investment services partnership interest" (ISPI), regardless of how the income is characterized at the partnership level, would be taxed as ordinary income, and would also be subject to self-employment tax. An ISPI is an interest in future profits of an "investment partnership"; an investment partnership is one in which substantially all of the entity's assets are investment-type assets, such as certain securities, real estate, interests in partnerships, commodities, cash or cash equivalents, or derivative contracts related to those assets.

- **Tighten up conservation easements.** Donors of conservation easements typically get a charitable deduction for the permanent restrictions they put on property that will be used exclusively for conservation purposes. Recent court decisions have upheld large deductions for easements preserving recreational amenities, including golf courses, surrounded by upscale homes. These contributions have raised concerns that the deductions claimed are excessive and seem to promote private interests rather than bona fide conservation activities. The proposal would prohibit a deduction for a conservation easement on a golf course. A second proposal would address historic preservation easements, and would disallow a deduction for restricting the "upward development" of an historic building, since such development is typically already restricted under local ordinances. In addition, conservation easements on buildings listed in the National Register would need to comply with the same (more stringent) rules applicable to buildings in a registered historic district.

- **Limit protracted payout for non-spouse beneficiaries of IRAs and retirement plans.** Under current law, a non-spouse beneficiary of an IRA or a retirement plan (such as a 401(k)) must begin taking "required minimum distributions" (RMDs) from the account the year after the account owner's death, but can spread those distributions out over her life expectancy. Thus, if widowed Mom names Child as beneficiary of her IRA, for example, and Child is 40 when Mom dies, Child's RMDs can last over 40 years, assuming those are the only distributions Child takes from the account. The proposal would change this rule, and in general would require that non-spouse beneficiaries withdraw the balance of the retirement account within five years after the owner's death. (Certain exceptions would apply for "eligible" beneficiaries, such as those who are disabled, chronically ill or a child under the age of majority.) The reason for the proposed change is that retirement accounts were intended to benefit owners and their spouses, and not heirs such as children and grandchildren.

  Comments. It is not surprising to see this proposal, as last year, something similar was in a highway bill, but was then pulled. Given the need for revenue, limiting the generous protracted payouts currently permitted for non-spouse beneficiaries seems like low-hanging fruit. If enacted, the proposal would potentially make it less attractive for owners of substantial traditional IRAs to convert that IRA into a Roth

IRA, so as to provide, say, children and grandchildren with long-term income-tax free annuities. Nevertheless, even if those beneficiaries had to take the balance of the Roth IRA within five years of the owner's death, they still would be receiving income-tax free dollars – something that would not be the case if they had simply “inherited” a traditional IRA with its built-in income tax liability. In other words, by converting a traditional IRA into a Roth IRA, the owner is accomplishing something akin to what happens with a defective grantor trust (see above): relieving the beneficiaries of an income tax liability they would otherwise have to pay.

- **Limit the size of retirement benefits.** Under current law, there are limits as to how much individuals can accrue under a defined benefit plan (such as a pension plan), or how much they can contribute to IRAs and various defined contribution plans, such as 401(k)s. There are no limits, however, as to how much individuals can accumulate in these tax-preferred accounts. Because of this, the proposal explains, individuals can accumulate more than is needed to fund “reasonable levels of consumption in retirement…well beyond the level of accumulation that justifies tax-advantaged treatment of retirement savings accounts.” The proposal would therefore cap the size of a taxpayer’s various retirement accounts by barring additional contributions (or accruals) if, in total, the accounts exceeded what was necessary to provide the maximum annuity permitted for a defined benefit plan: currently $205,000 per year for a hypothetical 62 year-old and her spouse (this equates to accumulations of about $3.4 million). When a taxpayer’s accounts hit that ceiling, they could still grow through investment returns, but additions to the accounts would only be allowed if the maximum permitted annuity increased, or the taxpayer’s investment returns for a given year were less than the actuarial assumptions underlying the annuity. If an addition put a taxpayer’s accounts over the ceiling, the taxpayer would include that excess in income, and have a grace period to withdraw it; if the taxpayer did not withdraw the excess, then that amount and attributable earnings would be subject to income tax when distributed, even if the distribution was from a Roth IRA or a Roth 401(k).

  Comments. This new proposal seems to be a reaction to this fall's presidential elections and the significant retirement accounts of one of the contenders. Nevertheless, it is not an excise tax to whittle down significant accounts, but a prohibition on additional contributions (or accruals). As Treasury Secretary Lew has pointed out, we’re not saying you can’t save for retirement, we’re just saying that such large amounts shouldn’t be tax-preferred. Still, will Congress really be inclined to limit how much taxpayers can accumulate in their retirement accounts, especially when a rising interest rate environment would make the permitted accumulation smaller? Although anything is possible, particularly if tax reform really comes about, Congressional sentiment might be against what could be viewed as “penalizing” successful savers.

- **Replace Consumer Price Index (CPI) with Chained CPI.** Every year, the IRS issues inflation-adjusted numbers for a variety of provisions, such as the income thresholds for the individual income tax rate brackets, personal exemptions, and income thresholds and phase-out ranges for various deductions, exclusions and tax credits. The proposal states that the CPI overstates the effects of inflation because it doesn’t fully reflect consumer reaction to price changes (as in, if prices go up, consumers will buy something cheaper). A “chained” CPI would “account more fully for this substitution effect” and better reflect changes in the cost of living. The proposal would take effect as of 2015.

  Comments. Just as the proposal to limit tax benefits for income that would be taxed at higher than 28% would raise taxes on some of those President Obama has previously pledged to protect (see above), a chained CPI would also raise taxes for everyone, in that tax brackets (and other tax benefits, such as personal exemptions) would increase more slowly. Similarly, a chained CPI would reduce cost-of-living increases for Social Security recipients – again something that would affect those the President has pledged to protect. Although this proposal represents an attempt at balance, Republicans and Democrats generally seem to dislike it, but for different reasons.

Legislative prospects? Where these proposals go may be a function of what happens with possible tax reform – and the prospects of that are…unknown. Rep. Dave Camp (R-MI), Chairman of the House Ways & Means Committee has been holding hearings, and issuing a number of legislative proposals that are designed to elicit comments and prod tax reform. Sen. Max Baucus (D-MT), Chairman of the Senate Finance Committee, has also been pursuing tax reform, but has recently announced his retirement. Does that put him in a better or worse position to achieve this goal? Time will tell. But trying to reconcile the Republican desire for lower rates and a broader tax base with the Democratic desire for higher taxes on those they feel can best afford them will not be easy. Considering the country's pressing fiscal needs, however, it's hard to imagine that tax revenues won't have to go up at some point. The question is how, and whose ox gets gored.

May 7520 rate issued

The IRS has issued the May 2013 7520 rate. It is 1.2%, a drop of 0.20% (20 basis points) from April's rate of 1.4%. May's annual, semiannual, quarterly and monthly mid-term rates are all 1%, a 0.09% (9 basis points) drop from April's annual, semiannual, quarterly and monthly mid-term rates, which were all 1.09%.

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RESUME OF JACK J. GRYNBERG
(July 2014)

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2007-Present	Founder, President and CEO, MOST Ethanol Company, LLC
2006-Present	Chairman, President and CEO, Superior Energy Company, Inc.
2005-Present	President and CEO, GADECO, LLC
1996-Present	Chairman, President and CEO, RSM Production Corporation
1990-Present	President and CEO, Pricaspian Development Corporation
1990-Present	Founder of a number of oil & gas and gold ventures exploration and development in the former Soviet Union
1988-Present	Active in international oil and natural gas and gold in the former Soviet Union, Middle East, Africa, Far East and Latin America
1985-Present	President and CEO, Grynberg Production Corporation
1980-Present	Chairman and CEO, Transworld Resources Corporation
1962-Present	Independent Oil, Gas, and Mineral Operator, U.S.A. Domestic operations within the continental United States with oil and gas production and exploration in California, Colorado, Louisiana, Michigan, Mississippi, South Dakota, Montana, New Mexico, North Dakota, Oklahoma, Texas, Utah and Wyoming
1954-Present	President, Grynberg Petroleum Company and its predecessor, Jack Grynberg and Associates
1976-1982	President and CEO, Olympic Uranium Company. Uranium exploration and development, U.S.A.

1974-1981	Founder, Chairman and CEO, Universal Drilling Company and Universal Drilling Services, Inc., a 6-rig drilling contractor with 10,000 to 22,000 foot rigs. Companies sold in 1981
1974-1981	President and CEO, Universal Drilling S.A., Panama
1973-1974	President, Hess Exploration Company (affiliate of Amerada Hess), beneficiary of 20% credited interest
1969-1976	Founder and Principal Stockholder (76%), Chairman, President and CEO, Oceanic Exploration Company, a public company engaged in off-shore and onshore oil, gas and mineral exploration and production in the following areas outside the continental United States: British North Sea, Dutch North Sea, Cameroon, Greece, Madagascar, Malaysia, Nicaragua, Peru, Timor and Taiwan. A public company whose stock was traded over the counter. Company sold in 1981.
1954-1962	Partner (60%-owner), Pirson-Grynberg Associates Through this partnership with Dr. Sylvain J. Pirson, jointly conducted 2-week intensive well log interpretation and 4-week advanced reservoir engineering courses in the U.S.A. (Austin, Texas and Denver, Colorado), Canada, Venezuela, England, France, Italy and the Middle East.
1954-1962	Owner, Jack Grynberg and Associates, Consulting petroleum, petrophysical, geological and geophysical engineers
1953-1954	Research Engineer, Research and Development Department, Continental Oil Company, Ponca City, Oklahoma

PROFESSIONAL ATTAINMENTS, APPOINTMENTS AND MEMBERSHIPS

Patent Holder:	United States Patent #4,492,862 - January 8, 1985 "Method and Apparatus for Analyzing Components of Hydrocarbon Gases Recovered from Oil, Natural Gas and Coal Drilling Operations" Invented by: Jack J. Grynberg, Leonard Y. Nelson and Stephen E. Moody
Appointments:	Appointed by Colorado Governor Richard Lamm to the Board of Trustees, Colorado School of Mines, March 1975 to March 1981 Appointed to the International Board of Advisors, Gubkin State Oil and Gas University, Moscow, Russia-1992 Appointed to the Presidential Council, Colorado School of Mines, 1989-Present Committee on Nuclear and Alternative Energy Systems of the National Academy of Sciences and National Academy of Engineering -- Presidential Appointments by President Gerald Ford (1974-1976) and President Jimmy Carter (1976-1980) Appointed by President Bill Clinton to panel consisting of chief executives of American oil and gas companies to represent the American oil and gas industry in the Russian Republic in order to enhance American-Russian oil and gas joint ventures, 1994.
Speaking Invitations:	Speaker at 6th African United Nations Oil & Gas, Trade & Finance Conference in Douala, Cameroon, October 2002

Represented the U.S. Department of Energy and U.S. Department of Commerce at 7th African United Nations Oil & Gas, Trade & Finance Conference in Luanda, Angola, and made a presentation on behalf of the U.S. Government, May 2003

Speaker at African Petroleum Forum in London, England, March 2004

Speaker at 8th African United Nations Oil & Gas, Trade & Finance Conference in Marrakech, Morocco, April 2004

Speaker at 10th Annual Latin Oil & Gas 2004 Conference in Rio de Janeiro, Brazil, June 2004

Speaker at African Petroleum Forum in Houston, Texas, April 14-15, 2005

Speaker at Africa Energy Forum 2005 in Barcelona, Spain, June 22–24, 2005

Speaker at Upstream Oil & Gas Summit at Amelia, Island, Florida, February 5–7, 2006; topic "Effective Strategies to Deal with the Top Challenges of Remote Supply Markets"

Speaker and Chairman of a Gas21 Session at Africa Energy Forum 2006 in Lille, France, June 28-30, 2006; topic "The Gas Potential of Africa"

Speaker at Tribal (American Indian) Energy in the Southwest Conference in Albuquerque, New Mexico, December 11-12, 2006

Speaker at a Gas21 Session at the Africa Energy Forum 2007 in Hamburg, Germany, June 27-29, 2007

Member of Market Watch Panel and Speaker on "African Bio-Fuels Potential" at Africa Energy Forum 2008 in Nice, France, July 2-4, 2008

Principal speaker at National Association of Royalty Owners (NARO) 28th Annual Convention on "Mismeasurement and Shortchanging of Royalty Owners by Gas Pipeline Companies and Oil Companies" in Little Rock, Arkansas, September 18-20, 2008

Speaker at Energy Freedom Summit on "Biofuels: Ethanol, Biodiesel , Methanol, Compressed Natural Gas (CNG) and Gas to Liquids (GTL)" in Chicago, Illinois, October 24-25, 2008

Chairman and Speaker on "Gas Value" and on "Trading African Biofuels," plus gave presentation on "Biofuels: Ethanol, Biodiesel, Methanol, Compressed Natural Gas (CNG), Gas to Liquids (GTL), and Flex Fuels" at the Africa Energy Forum in Bordeaux, France, June 30-July 2, 2009

Chairman of "Investment Opportunities and Risks" Session at AfricaGAS at the Africa Energy Forum 2010 in Basel, Switzerland, June 29-July 1, 2010

Speaker at Africa Energy Forum 2011 in Paris, France, on “Natural Gas Potential of Africa,” June 13-15, 2011

Speaker at Platts 1st Annual Biofuels Conference in Amsterdam, The Netherlands, on “Advances in Biofuel Feedstocks for African Development,” June 28-29, 2012

Speaker at Merrick & Company 2nd Annual Bioprocessing Conference in Denver, Colorado, on “Cassava and Plantains-Biofuels Feedstocks for Africa,” Sept. 10, 2012

Memberships:
National Society of Professional Engineers
Society of Exploration Geophysicists (SEG)
American Association of Petroleum Geologists (AAPG)
American Institute of Mining and Engineers (AIME)
Society of Petroleum Engineers (SPE) - Legion of Honor Member
Association of International Petroleum Negotiators
European Society of Exploration Geophysicists (ESEG)*
Rocky Mountain Association of Geologists (RMAG)
American Petroleum Institute (API)*
Member Board of Trustees, Colorado Energy Research Institute, March 1975 to March 1981
Honorary Consul, Republic of Panama, 1974-1986
Member, Uranium Subpanel of Supply and Delivery Panel

***Member Emeritus**

PUBLICATIONS

“Induction Log Departure Curves for No Invasion” (Oil Base Mud or Air)
By: Jack J. Grynberg - 1953

“The Microlog - Its Application and Interpretation”
By: Jack J. Grynberg and Leendert de Witte - 1954

“Quantitative Electric Log Interpretation of “D” and “J” Sands–Denver Basin”
By: Jack J. Grynberg - 1956

“"The Continuous Dipmeter”
Articles in April 1 and 22, 1957, The Oil and Gas Journal
By: Jack J. Grynberg and Morris I. Ettinger

“Log Interpretation Charts”
By: Sylvain J. Pirson and Jack J. Grynberg - 1958

“Selected Well Logging Problems for Geologists and Petroleum Engineers”
By: Sylvain J. Pirson and Jack J. Grynberg – 1958

“DST - Success or Failure?”
Article in June 22, 1959, The Oil and Gas Journal
By: Jack J. Grynberg

"Log Interpretation Manual Number 2"
Supplement-A-Ri-Rt Conversion Charts
Based on Lectures by Jack J. Grynberg and Sylvain J. Pirson – 1960

"Handbook of Well Log Analysis"
McGraw-Hill - 1964
Based on Lectures by Sylvain J. Pirson and Jack J. Grynberg

"Application of Water Resistivity Data"
By: Jack J. Grynberg and B.L. Carlberg - 1974

Study of Nuclear and Alternative Energy Systems
Supporting Paper 1 - 1978
"Problems of U.S. Uranium Resources and Supply to the Year 2010"
By: The National Research Council, The National Academy of Science
By: Leon T. Silver, Jack J. Grynberg, David S. Robertson, Joseph B. Rosenbaum and Arnold J. Silverman
Study of Nuclear and Alternative Energy Systems
"U.S. Energy Supply Prospects to 2010" - 1979
By: The National Research Council, National Academy of Science
By: Jack J. Grynberg and others.

LANGUAGES

English, French, German, Polish, Russian and Hebrew

LEGISLATION

H.R. 501 - Sections 801 and 802, "Study of Actions to Improve the Accuracy of Collection of Federal Oil, Condensate, and Natural Gas Royalties Act of 2011"
H.R. 3534 titled "Study of Actions to Improve the Accuracy of Collection of Royalties"
H.R. 2152 titled "Foreign Business Bribery Prohibition Act of 2009"
GAO-10-313 Report issued March 2010, "Interior's Oil and Gas Production Verification Efforts do not Provide Reasonable Assurance of Accurate Measurement of Production Volumes"

MILITARY SERVICE

Resistance against Nazis, 1943-1944
Volunteer, Israel's War of Independence, 1947-1949
U.S. Army Corps of Engineers; U.S. Army Research and Development Command, Soviet Radioactive Warfare Section, and worked as a scientific spy 1956-1957
Honorable Discharge

PERSONAL

U.S. Citizen, born January 21, 1932, Brest, Poland
Married June 1959 to Celeste C. Bachove
Three (3) children and three (3) grandchildren

Election 2016: Trump Wins Presidency, Republicans Hold Congress

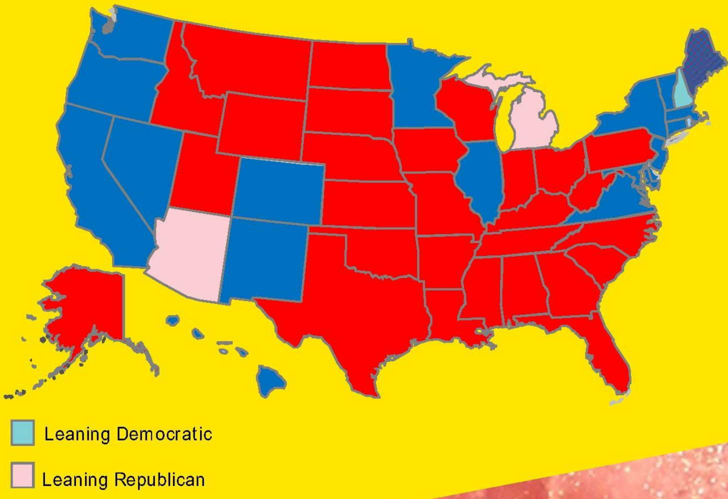
Washington Council Ernst & Young

9 November 2016

After the most tumultuous and unpredictable campaign in modern history, Republican Donald Trump upset Democrat Hillary Clinton to win the Presidency, claiming at least 279 electoral votes (270 electoral votes to win) to Clinton's 228, with results in Arizona, Michigan, and New Hampshire still outstanding, according to the Associated Press. The popular vote margin remains close, with Trump currently trailing by approximately 200,000 votes out of a total of almost 120 million votes that have been counted. Clinton's blue wall of support was pierced by Trump with unexpected wins in Pennsylvania and Wisconsin. He also won the needed battleground states of Florida, Ohio, and North Carolina. With fewer losses than expected, Republicans will retain their majorities in the House and Senate, thereby controlling both ends of Pennsylvania Avenue.

Clinton, who called Trump last night to concede the race, said this morning, "I offered to work with him [Trump] on behalf of our country" and "our nation is more deeply divided than we thought," but went on to say, "we stand together..and our best days are still ahead of us." In his remarks shortly before 3:00 AM, President-elect Trump said, "It is time to bind the wounds of division. It is time for us to come together as one united America." He went on to say that it was "not a campaign, but an incredible movement." And, alluding to his policy agenda, Trump said we "would be working together to begin the task of rebuilding our nation and renewing the American dream." Trump has touted an agenda of revitalizing the economy and promoting job growth by reforming the tax code, rebuilding America's infrastructure, repealing and replacing "Obamacare," and being "tough" on immigration and in renegotiating international trade agreements.

Maintaining the Senate majority will give Republicans the ability to set the agenda in the Senate. However, bipartisan cooperation still will be necessary to achieve meaningful policy accomplishments as Senate rules generally require a 60-vote threshold for movement on most issues. An early challenge may be filling the Supreme Court vacancy created by the death of Antonin Scalia in early 2016 –one that could spark fireworks on Capitol Hill and across the country's highly charged political environment. How Republicans, Democrats, and Trump navigate through the process of nominating and confirming a new Justice to the Supreme Court is likely to set the tone in the Senate for the next two years. The nature of Speaker Paul Ryan's relationship with President-elect Trump and his often unruly House Republican Conference is not clear at this time. However, the House Republican "Better Way" agenda, which was developed in consultation with the Trump campaign, is now a focal point for congressional action.



Electoral votes	
Trump	Clinton
279	228

EY

Building a better working world

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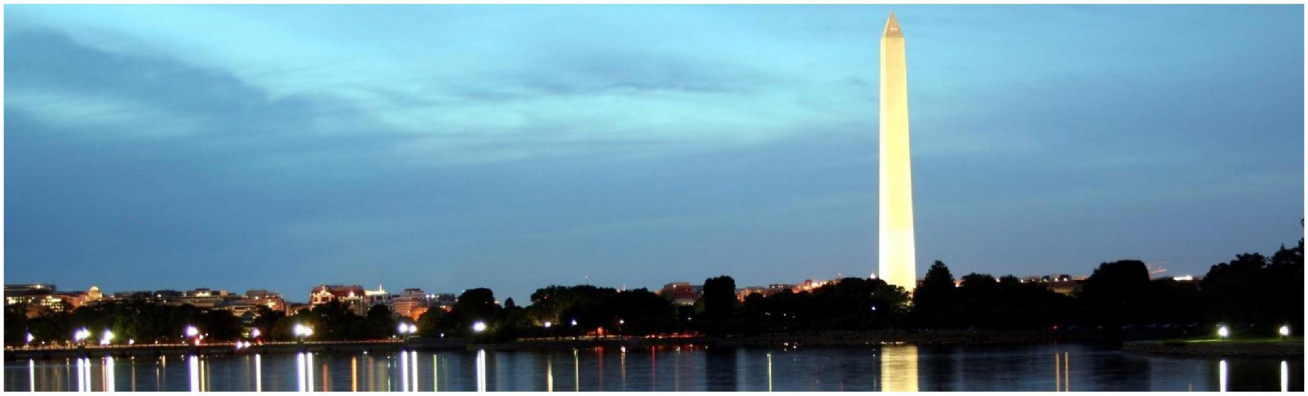

Election results

POLLING
STATION

With Republicans set to control the White House, Senate, and House of Representatives for the session of Congress beginning in January 2017, the lame-duck session of the current Congress between now and the end of this year seems likely to be limited to keeping the government funded beyond the expiration of the current continuing resolution on December 9, 2016. President-elect Trump and the Republican Congress are certain to provide ambitious policy agendas with plenty of proposals to analyze and the need for significant legislative activity. However, it remains to be seen where Democrats and Republicans, particularly in the Senate, will be able to forge compromise.

With 24 of the 34 Senate seats up for election on November 8th held by Republicans, and many of those seats quite vulnerable, retaining control is a major victory for Senate Majority Leader Mitch McConnell (R-KY) and his Republican majority. Currently, Republicans are expected to hold at least 51 seats in the new congress, with Senator Kelly Ayotte's (R-NH) reelection bid in New Hampshire still undecided. In Louisiana, State Treasurer John Kennedy (R) received 25 percent of the vote and Foster Campbell (D), a member of the Louisiana Public Service Commission, received 17%in a crowded 24 candidate "jungle primary" to advance to a runoff election to be held on December 10, 2016. Senior House Ways and Means Committee member Charles Boustany (R-LA) fell just short in his quest to make the two-candidate runoff receiving 15%of the vote. While the Louisiana seat is technically undecided, the state went strongly Republican in the Presidential election and Kennedy is heavily favored to hold the seat.

Illinois Senator Mark Kirk (R-IL) lost his race to Rep. Tammy Duckworth (D-IL). In Indiana, Rep. Todd Young (R-IN) won his race against former Democratic Senator Evan Bayh (D-IN) to succeed retiring Senator Dan Coats (R-IN). In Nevada, Catherine Cortez Masto (D-NV) beat Rep. Joe Heck (R-NV) to hold the seat of retiring Senate Democratic Leader Harry Reid (D-NV). In other notable races:

- Ohio: Once ground zero for Senate control, Senator Rob Portman (R-OH) easily beat former Governor Ted Strickland (D-OH).
- North Carolina: In a race that was consistently within the margin of error in recent days, Senator Richard Burr (R-NC) held onto his seat against former state legislator Deborah Ross (D-NC).
- Pennsylvania: Behind in most recent polling, Senator Pat Toomey (R-PA) prevailed against former federal and state environmental official Katie McGinty (D-PA).

Select Senate race results	
Arizona	
Kirkpatrick	
McCain	✓
Colorado	
Bennet	✓
Glenn	
Florida	
Murphy	
Rubio	✓
Illinois	
Duckworth	✓
Kirk	
Indiana	
Bayh	
Young	✓
Missouri	
Kander	
Blunt	✓
Nevada	
Cortez Masto	✓
Heck	
New Hampshire	
Hassan	
Ayotte	?
North Carolina	
Ross	
Burr	✓
Ohio	
Strickland	
Portman	✓
Pennsylvania	
McGinty	
Toomey	✓
Wisconsin	
Feingold	
Johnson	✓

Election results

POLLING
STATION

Along with the House GOP majority, Senate Republicans will unambiguously set the agenda in the new Congress. However, with a closely divided Senate, Republicans will be well short of the 60 votes necessary under the Senate rules to bring debate to a close (cloture) and advance controversial legislation without votes from the other party. Narrow Republican and Democratic majorities in the recent past have both found their legislative agendas stalled unless they were willing to compromise to attract bipartisan support.

One area where 60 votes are not required is confirming appointments to the Administration and the Federal courts, with the exception of the Supreme Court. There could be speculation about whether Senate Republicans would consider a rules change to create a 51 vote threshold for Supreme Court nominees, also known as the "nuclear option." But any serious consideration on this front is far from certain.

Republican House losses in the election were minimized for a number of reasons, including the Republican turnout for Donald Trump, the relatively static map created by the post-2010 redistricting process, and highly localized campaigns run by Republican House Members in marginal districts where support for Trump was weaker. With a loss in the single digits, the GOP majority goes from 246 members to somewhere in the 230s, giving Republicans a margin of 20 or so seats versus the current 30.

Senate profile

Current Majority Leader McConnell will stay in the post after successfully working this past session to keep the Senate in Republican hands, while Senator Charles Schumer (D-NY) will take over for retiring Senator Reid after 12 years as Democratic Leader. Given that Republicans held control of the Senate, McConnell will spend the next two years working toward a filibuster-proof 60-vote majority in the 2018 elections, when 25 Democratic or Independent seats are up for re-election, compared with only eight Republicans. Schumer will likely try to reach some compromises with Republicans while distinguishing his party ahead of 2018, and will likely be pulled left, with the influence of Senators Elizabeth Warren (D-MA) and Bernie Sanders (D-VT).

Leadership elections are expected to be held on Wednesday, November 16, and committee ratios, likely to be close to what they are now, will be determined soon after the Senate reconvenes. Predicting the chair and ranking members of Senate committees immediately after an election is speculative because members with seniority will be able to choose between chairmanships and must adhere to Senate Republican committee leadership term limits. Republican senators may serve as chairman for six years and six years as ranking member for any one committee, on a cumulative basis. Following is a discussion of expected select committee chairmen and membership for 2017. An added complication could arise should sitting Republican senators be tapped for cabinet positions in the Trump administration.

AGRICULTURE, NUTRITION, AND FORESTRY (Same leadership as 114th Congress)	
Chairman Pat Roberts (R-KS)	Ranking Member Debbie Stabenow (D-MI)

APPROPRIATIONS	
Chairman Thad Cochran (R-MS)	Ranking Member ?????

Several Democrats on the committee with significant seniority are in line to choose other ranking positions: Leahy - Judiciary; Murray - HELP; Feinstein - Intelligence; Durbin, who serves as the Assistant Democratic Leader, and doesn't take a ranking member position on a major committee; and Jack Reed - Armed Services. However, given the importance of the Appropriations Committee and its responsibility for preparing bills to fund the government, it would be surprising that the ranking position would be very far down that list.

ARMED SERVICES (Same leadership as 114th Congress)	
Chairman John McCain (R-AZ)	Ranking Member Jack Reed (D-RI)

BANKING, HOUSING, AND URBAN DEVELOPMENT	
Chairman Mike Crapo (R-ID)	Ranking Member Sherrod Brown (D-OH)

Senator Richard Shelby (R-AL) has served his six-year limit as Chairman.

BUDGET	
Chairman Mike Enzi (R-WY)	Ranking Member Bernie Sanders (I-VT)

If Senator Murray retains the ranking slot on HELP, former presidential candidate Sanders will continue to fill the ranking member role.

COMMERCE, SCIENCE, AND TRANSPORTATION (Same leadership as 114th Congress)	
Chairman John Thune (R-SD)	Ranking Member Bill Nelson (D-FL)

Senate profile

ENERGY AND NATURAL RESOURCES (Same leadership as 114th Congress)	
Chairman Lisa Murkowski (R-AK)	Ranking Member Maria Cantwell (D-WA)

ENVIRONMENT AND PUBLIC WORKS (Same leadership as 114th Congress)	
Chairman John Barrasso (R-WY)	Ranking Member Tom Carper (D-DE)

Jim Inhofe (R-OK) has exhausted his six-year limit. Senator Barbara Boxer (D-CA), the current ranking member of EPW, is retiring. Senator Carper could opt for the post over his current position on the Homeland Security and Governmental Affairs Committee. If Carper decides to stay at HSGA, Senator Ben Cardin (D-MD) would have the option of ranking member of EPW or Foreign Relations. If Cardin should choose Foreign Relations, Senator Sanders would be next in line for the ranking member position. Barrasso can be expected to continue the criticisms of current Chairman Inhofe of EPA regulations and their effect on US energy development and the energy industry.

FINANCE (Same leadership as 114th Congress)	
Chairman Orrin Hatch (R-UT)	Ranking Member Ron Wyden (D-OR)

Senator Hatch will continue to serve as Chairman by way of an agreement reached with Senator Grassley, who is actually more senior to Senator Hatch on the Committee. (Grassley will serve as Judiciary Chairman.) Dan Coats (R-IN) is retiring from Congress. Senators Richard Burr (R-NC) and Pat Toomey (R-PA) both won re-election races. Eight Democratic committee members will be running for re-election in 2018: Debbie Stabenow (D-MI), Maria Cantwell (D-WA), Bill Nelson (D-FL), Robert Menendez (D-NJ), Tom Carper (D-DE), Ben Cardin (D-MD), Sherrod Brown (D-OH), and Bob Casey (D-PA).

FOREIGN RELATIONS (Same leadership as 114th Congress)	
Chairman Bob Corker (R-TN)	Ranking Member Ben Cardin (D-MD)

HEALTH, EDUCATION, LABOR, AND PENSIONS	
Chairman Lamar Alexander (R-TN)	Ranking Member Patty Murray (D-WA)

If Senator Murray opts for ranking member of Appropriations, Senator Sanders would be in line to be ranking member of HELP where he could be expected to use the position to highlight income inequality.

HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS	
Chairman Ron Johnson (R-WI)	Ranking Member Claire McCaskill (D-MO)

Senator McCaskill will get the ranking member position if Senator Tom Carper (D-DE) opts for ranking member of EPW.

JUDICIARY	
Chairman Charles Grassley (R-IA)	Ranking Member Patrick Leahy (D-VT)

Senator Leahy will have the option of choosing ranking member of either Appropriations or Judiciary. Most think that with the expectation of at least one Supreme Court nomination and immigration reform legislation in the next two years, he will opt to stay in the ranking position on Judiciary.

House profile

By retaining control of the House and Senate, with the loss of only a few seats, and winning the White House, Republicans believe they have a mandate to govern. The potential for a Freedom Caucus challenge to Paul Ryan's leadership is unlikely given the party's strong showing. The path is clear for the Speaker to pursue the policy actions described in the "Better Way" policy platform developed earlier this year and promoted through the ubiquitous presence of a pamphlet describing the plan that he used during the campaign and press appearances. That effort generated interest from Trump, who adapted his tax plan to reflect some of the proposals.

The week following the elections and prior to Thanksgiving will be focused on internal party organizational issues, including the election of party leadership, and discussion around Republican conference and Democratic caucus rules and the makeup of the Steering Committee, which will determine committee assignments. The leadership of the chamber will be decided in closed-door meetings during this time, with a formal floor vote for Speaker in January. Some Steering Committee decisions regarding committees are likely to take place after Thanksgiving and to include ratification of committee chairmanships and Speaker-appointed committee memberships, as well as appointments of members to vacant slots on "A" committees (including Ways and Means, Energy and Commerce and Financial Services). Ryan and Democratic Leader Nancy Pelosi (D-CA) will conduct a negotiation to determine committee ratios, which would be expected to be close to what they are now.

WAYS AND MEANS (Same leadership as 114th Congress)	
Chairman Kevin Brady (R-TX)	Ranking Member Sander Levin (D-MI)

Republican members Boustany and Young ran for Senate ,and Rep. Robert Dold (R-IL) lost his re-election campaign, leaving three open seats. Republicans under consideration for Committee seats include Reps. Carlos Curbelo (R-FL), Mike Bishop (R-MI), Bradley Byrne (R-AL), Jackie Walorski (R-IN) and Andy Barr (R-KY). Longtime Democratic members Charles Rangel (D-NY) and Jim McDermott (D-WA) are retiring.

ENERGY & COMMERCE	
Chair John Shimkus (R-IL)/ Greg Walden (R-OR)	Ranking Member Frank Pallone (D-NJ)

Rep. Fred Upton (R-MI) will reach his term limit as chairman of the Energy and Commerce Committee and will step down at the end of the current Congress. Rep. Upton noted that he's "not planning to" seek a waiver of the term limits. The two current frontrunners to replace the outgoing chairman include Reps. John Shimkus (R-IL) and Greg Walden (R-OR). Rep. Shimkus has seniority on the committee, but Walden has also generated party support related to his role serving as chairman of the National Republican Congressional Committee for the past two election cycles. Rep. Joe Barton (R-TX) is also expected to run for the Chairmanship. The powerful Republican Steering Committee, consisting of Republican leadership as well as rank-and-file members, will decide in a private meeting who will lead the committee in the 115th Congress. Adding to the leadership shuffle at the Energy and Commerce Committee, the current chairman of the E&C Subcommittee on Health, Rep. Joe Pitts (R-PA), is retiring at the end of the Congress. Rep. Tim Murphy (R-PA) is under consideration to replace him.

EDUCATION & THE WORKFORCE	
Chairman Virginia Foxx (R-NC)	Ranking Member Bobby Scott (D-VA)

Current Chairman John Kline (R-MN) did not seek reelection. He will likely be succeeded as chair of the House Education and Workforce Committee by Rep. Foxx. She has had a limited role on pension and retirement issues, but has been a reliable voice for limited government regulation and joined in opposing the Obama Administration's investment advice regulations. Where Chairman Kline put pension reform high on the committee's agenda, Foxx has not signaled a strong interest in making pension issues a priority.

House profile

APPROPRIATIONS	
Chairman Rodney Frelinghuysen (R–NJ)	Ranking Member Nita Lowey (D-NY)

BUDGET	
Chairman Tom Price (R-GA)	Ranking Member John Yarmuth (D-KY)

Current ranking Member Chris Van Hollen (D-MD) was elected to the Senate; Yarmuth is expected to replace him.

FINANCIAL SERVICES (Same leadership as 114th Congress)	
Chairman Jeb Hensarling (R-TX)	Ranking Member Maxine Waters (D-CA)

JUDICIARY (Same leadership as 114th Congress)	
Chairman Bob Goodlatte (R-VA)	Ranking Member John Conyers (D-MI)

OVERSIGHT (Same leadership as 114th Congress)	
Chairman Jason Chaffetz (R-UT)	Ranking Member Elijah Cummings (D-MD)

TRANSPORTATION (Same leadership as 114th Congress)	
Chairman Bill Shuster (R-PA)	Ranking Member Peter DeFazio (D-OR)

Administration and agenda

Looking ahead to the Trump administration and a Republican-controlled Congress, the focus will be on Trump's top priorities: infrastructure, tax reform, dismantling the Affordable Care Act (ACA), and immigration reform. President-elect Trump highlighted his commitment to infrastructure investment during his victory speech early November 9. "We are going to fix our inner cities and rebuild our highways, bridges, tunnels, airports, schools, hospitals," he said. "We're going to rebuild our infrastructure, which will become, by the way, second to none. And we will put millions of our people to work as we rebuild it." Trump would fund infrastructure investment through public-private partnerships and private investments through tax incentives rather than tax reform, though he has called for early action on that issue as well. On October 22, Trump outlined a voter contract for his first 100 days plan that calls for enactment of:

- The Middle Class Tax Relief And Simplification Act (comprehensive tax reform);
- The End the Offshoring Act, to establish tariffs to discourage companies from laying off their workers in order to relocate in other countries and ship their products back to the U.S. tax-free;
- The American Energy & Infrastructure Act, to leverage public-private partnerships and private investments through tax incentives to raise $1 trillion in infrastructure investment over 10 years;
- The School Choice And Education Opportunity Act, to expand primary education options and make college more affordable;
- The Repeal and Replace Obamacare Act, to repeal the ACA and replace it with Health Savings Accounts;
- The Affordable Childcare and Eldercare Act, to allow Americans to deduct childcare and elder care;
- The End Illegal Immigration Act, to fund the construction of a wall on the Mexican border;
- The Restoring Community Safety Act, to reduce crime;
- The Restoring National Security Act, to rebuild the military by eliminating the defense sequester and expanding military investment; and
- The Clean up Corruption in Washington Act, to enact "new ethics reforms to Drain the Swamp and reduce the corrupting influence of special interests on our politics."

As part of the voter contract announced in October, Trump has also pledged to act on his first day in office to "cancel every unconstitutional executive action, memorandum and order issued by President Obama." Trump advisor Anthony Scaramucci said in October that the new administration would repeal the rulemaking on conflicts of interest in the delivery of investment advice to IRA and 401(k) plan investors.

Regulations that have been finalized cannot be unilaterally vacated by executive order without intervening regulatory or legislative action. In order to make changes to final regulations without legislative action, agencies are typically required to follow the administrative procedural process which requires a notice and comment process prior to modifying regulations. If an Administration wishes to repeal or revise a final regulation through the administrative process, the agency may be required to demonstrate that its actions are not "arbitrary and capricious," and based on more than a change in political views. It is possible that a new Administration could dispense with the notice and comment process by moving to issue an interim final rule, replacing the previous regulation. In this situation, the agency could be called on demonstrate that it acted with "good cause" to circumvent the typical notice and comment requirements.

A new Administration could also use its executive power to affect the level of legal defense of challenges to existing regulations provided by the Administration or temporarily refuse to exercise its enforcement responsibilities until compelled through legal action or public pressure.

Trump also intends to immediately begin the process of filling the Supreme Court vacancy created by the death of Antonin Scalia in early 2016 – one that could spark fireworks on Capitol Hill and across the country's highly charged political environment. How Republicans, Democrats, and Trump navigate through the process of nominating and confirming a Justice to the Supreme Court is likely to set the tone in the Senate for the next two years.

Trump also intends to act on trade issues on his first day in office, including:

- announcing his intention to renegotiate or withdraw from NAFTA;
- announcing withdrawal from the Trans-Pacific Partnership; and

Administration and agenda

- directing Treasury to label China a currency manipulator.

Consistent with Trump's desire to change the way business is conducted in Washington, he also pledges to act on his first day in office to:

- propose a constitutional amendment to impose term limits on all members of Congress;
- require that for every new federal regulation, two existing regulations must be eliminated; and
- impose a five–year ban on White House and congressional officials becoming lobbyists after they leave government service.

(The Trump Contract with the Voter is available at https://assets.donaldjtrump.com/CONTRACT_FOR_THE_VOTER.pdf)

Budget. While President-elect Trump has vowed to act quickly on repeal of the ACA, it is difficult to see how that can be accomplished outside of reconciliation instructions for FY 2018. "When we win on November 8th, and elect a Republican Congress, we will be able to immediately repeal and replace Obamacare. I will ask Congress to convene a special session," he said November 1.

An early focus of attention will be the first Trump budget proposal and the congressional FY 2018 budget resolution. As with the past several years under divided government, a main issue will be how to address the Budget Control Act sequester for FY 2018. According to the Congressional Budget Office, the cap on discretionary budget authority originally established by the Budget Control Act is set at $1.156 billion in 2018, though it will be reduced by automatic procedures unless Congress intervenes. CBO said the reduction will total $91 billion for 2018: $54 billion for defense and $37 billion in 2018 for nondefense. Therefore, total budget authority is slated to be $1.065 trillion, split between $549 billion for defense and $516 billion for nondefense. Both Trump and Speaker Ryan want to eliminate the sequester as it applies to defense, but would likely want to maintain the sequester for non-defense spending.

As reported in Politico last month, Speaker Ryan is bullish on using the "budget reconciliation" process to pass significant tax reform. "This is our plan for 2017," Ryan said, waving a copy of his "Better Way" policy agenda. "Much of this you can do through budget reconciliation." He said key pieces are "fiscal in nature," meaning they can be moved quickly through a budget maneuver that requires a simple majority in the Senate and House.

Use of "Budget Reconciliation" to enact legislation involves a two-step process. First, both Chambers of Congress need to pass a concurrent Budget Resolution (requires only simple majority in the Senate) that contains "reconciliation instructions." These instructions are directions to committees of jurisdiction to change the spending or revenue numbers (or both), and to report back the changes by a date certain. A budget resolution generally is a legislative vehicle that serves as the blueprint for fiscal policy and establishes a framework for consideration of spending and revenue bills for the coming fiscal year. Technically, a budget resolution is a "concurrent resolution" which is binding in the House and the Senate. Because a concurrent resolution is not submitted to the President for signature, it does not have the force of law.

The second part of the process is to pass "reconciliation" bills that adhere to the reconciliation instructions from the budget resolution.

Reconciliation bills can involve changes to spending, revenue, or the debt limit (or any combination of the three). Importantly, these reconciliation bills also only require a simple majority in the House and Senate for passage.

Reconciliation bills carry strict debate time and amendment restrictions, but unlike a budget resolution, reconciliation legislation contains specific spending and revenue policy changes that are signed into law by the President. In the Senate, debate is limited to 20 hours. While only a simple majority is required for passage in the Senate, 60 votes are required to waive violations of the so-called "Byrd rule," which prohibits the inclusion of provisions that increase the budget deficit for the period outside the budget window, usually a 10-year period. An unlimited number of amendments may be offered and voted upon, even after the 20 hours of debate have expired – a process often referred to as a "vote-a-rama".

This process is attractive because of the simple majority vote in the Senate, but carries with it restrictions such as the ten-year expiration for titles of the bill that increase the deficit outside the budget window.

It was used by President George W. Bush to pass significant tax cut legislation in 2001 (the "Bush tax cuts") and is expected to be considered next year for tax reform. Note that the Bush tax cuts were originally sunsetted at the end of ten years due to the Byrd rule. Subsequent legislation passed outside reconciliation process made many of these provisions permanent.

Administration and agenda

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Debt limit. The debt limit will be reinstated after March 15, 2017, though Congress will likely have additional time to either suspend or increase the limit. Extraordinary measures that can be undertaken by the Treasury Department should allow Treasury to continue meeting its financial obligations until at least midsummer of 2017, according to a September 13 posting by the Bipartisan Policy Center. When the debt limit is reinstated, the federal government's accumulated debt will immediately equal the new ceiling, which is projected to be about $20.1 trillion. The optics of the figure surpassing $20 trillion could spur lawmakers to be even more adamant about demands for spending cuts in return for supporting an additional increase or suspension of the debt limit.

FAA reauthorization. The Airport and Airway Trust Fund taxes expire after September 30, 2017, along with Federal Aviation Administration (FAA) spending authority, both of which were last extended in July. Privatization of the air traffic control system was a sticking point in negotiations this year. The FAA bill can be a vehicle for other tax legislation.

Personnel. The fact that Trump has not held political office and is not a traditional Republican puts a new spin on filling out his administration. Press reports have speculated about potential cabinet appointments. Trump has reportedly said that Goldman Sachs alumnus and campaign finance chairman Steven Mnuchin could be a possible nominee for Treasury secretary.

Economic advisers that have represented Trump on the campaign include investor Wilbur Ross and economists Peter Navarro, Larry Kudlow, and Stephen Moore.

New Jersey Gov. Chris Christie is in charge of Trump's transition. Politicians who have supported and served as surrogates for Trump and could possibly be tapped for Cabinet posts include: former New York mayor Rudy Giuliani, former House Speaker Newt Gingrich, Senator Jeff Sessions (R-AL), Dr. Ben Carson, and former Alaska Governor Sarah Palin. Senate Foreign Relations Committee Chairman Bob Corker (R-TN) was reportedly under consideration for the vice presidential pick and could be tapped for a Cabinet post.

Economic packages pursued by past presidents	
Barack Obama Took office January 20, 2009	American Recovery and Reinvestment Act of 2009 Enacted February 17, 2009 ► Stimulus legislation, included bonus depreciation
George W. Bush Took office January 20, 2001	Economic Growth and Tax Relief Reconciliation Act of 2001 Enacted June 7, 2001 ► The "Bush tax cuts" reduced individual rates, repealed the estate tax
Bill Clinton Took office January 20, 1993	Omnibus Budget Reconciliation Act of 1993 Enacted August 10, 1993 ► Increased individual, corporate taxes
George H. W. Bush Took office January 20, 1989	Omnibus Budget Reconciliation Act of 1990 Enacted November 5, 1990 ► Increased individual taxes despite "no new tax" pledge
Ronald Reagan Took office January 20, 1981	Economic Recovery Tax Act of 1981 Enacted August 13, 1981 ► Sharply reduced individual, corporate taxes

Lame-duck session

With the Republican sweep in the election, the sense is the lame-duck legislative agenda will be minimalist, with Republicans having little motivation to engage in other business aside from funding the government beyond December 9. Congress returns the week of November 14 for organizational meetings and then departs again for Thanksgiving week, leaving lawmakers only a couple of weeks to finish their legislative business. Other possibilities include: a defense authorization bill; the conference report for an omnibus energy bill; the "21st Century Cures" bill increasing funds for medical research and accelerating drug approvals; the Water Resources Development Act (WRDA), which would also carry money to address the drinking-water crisis in Flint, Michigan; tax extenders provisions; and retirement savings measures.

Government Funding. Under the stopgap continuing resolution (CR) cleared on September 28, funding for the government will expire on December 9. Only one of the 12 fiscal 2017 appropriations bills has been sent to the President so far. The government funding bill may take the form of a large omnibus bill or continuing resolution, if the House and Senate Republican leadership's preference for moving spending bills on a standalone basis or in packages does not pan out. Given the election results, leaders are likely to limit the length of the spending bill to a handful of months to allow the Trump administration an opportunity to help shape fiscal 2017 spending next year. Speaker Ryan has said he favors a strategy of combining spending bills into "minibus" vehicles, but Senate Democrats have said such an approach could be a tactic to get around the spending caps Congress agreed to on a bipartisan basis last year. The bill(s) may include additional spending to address flooding in Louisiana and elsewhere, and damage from Hurricane Matthew. If the vehicle for government funding is a large omnibus bill, Republicans may push for some conservative policy "riders" as their price for accepting the budget numbers that were negotiated last year.

Tax. There are no must-pass tax issues for the lame-duck session, and it is unclear whether there will be consideration of expiring tax provisions, House and Senate miscellaneous tax bills, and tax technical corrections. House Ways and Means Chairman Brady is opposed to addressing tax extender provisions this year, preferring to look forward to tax reform; that could also be the position taken on other tax issues given that Republicans will control Washington and have a shared interest in tax reform. However, Senate Leader McConnell previously committed to addressing energy tax extenders this year, so they could still come up for consideration.

Pensions. The Senate could consider the Retirement Enhancement and Savings Act, a package of measures affecting multiple-employer pension plans, 401(k) plans and annuities, which was approved on a unanimous vote by the Senate Finance Committee on September 21. The committee also approved the Miners Protection Act, which would fund retiree health and pension benefits for coal miners, which a majority of the committee's Republican members opposed.

Health. One of the top Republican legislative priorities for the lame-duck session is the 21st Century Cures bill, a package of measures intended to spur new medical treatments and boost funding for the National Institutes of Health, the FDA, and White House initiatives such as "precision medicine" and the Cancer Moonshot. Questions remain in both the House and Senate over how to pay for the bill and the size of the funding increases, but Senator McConnell has said the bill "could end up being the most significant piece of legislation we pass in the whole Congress."

On the House side, this continues to be the top priority of the Chairman of the Energy and Commerce Committee Fred Upton. Leaders of the Energy and Commerce Committee said on September 29 that they had been "working hard for months, and we will continue to work toward an agreement that can pass both chambers and be signed by the President." The House passed its version of the 21st Century Cures bill (H.R. 6) in July 2015 by a vote of 344-77, including nearly $9 billion in new research funding for the NIH and reforms to the FDA's process for approving certain new medicines and medical devices. In the Senate, the Health, Education, Labor, and Pensions (HELP) Committee has passed a package of 19 bills aimed at accelerating approval of new drugs and medical devices and attracting talented researchers to the FDA, but the full Senate has yet to consider the bills. HELP Committee Chairman Lamar Alexander (R-TN) told Bloomberg BNA in June that the impediments to passage are the proposals' complexity and disagreements over how to pay for them. Negotiations continue.

Speaker Ryan has also listed passage of mental health legislation as one of his priorities for the lame-duck session. H.R. 2646, a bill sponsored by Rep. Tim Murphy (R-PA) that passed the House almost unanimously in July, would expand Medicaid coverage of mental health services, fund more psychiatric hospital beds and change privacy rules to allow caregivers to receive more information about patients.

Lame-duck session

A Senate version (S. 2680) prompted Democratic concerns over funding levels, privacy issues, and other matters. This issue is one that could slip into the next Congress if negotiators are unable to reach an agreement given the limited time available.

Another outstanding year-end issue for Congressional leaders is whether to address the pending Medicare Part-B premium increases facing new and some existing Medicare enrollees caused by a smaller annual Social Security cost-of-living adjustment (COLA). Congress has acted in the past to avert premium increases due to modest COLA adjustments before the premium increases take effect. Additional Medicare changes that are bipartisan in nature could be added to this Part B adjustment if leaders agree to move forward. Up for potential consideration are a handful of Medicare-related bills that have already passed the House or Senate in the 114th Congress, as well as a package of provisions recently unveiled by the Finance Committee that would address how chronic conditions are managed in the Medicare population.

Additionally, Congress continues to contemplate action in the lame duck session to address the Obama Administration's proposal to modify the payment mechanisms for Part B Medicare drugs. While the proposal has not yet been finalized, concerns about the size and scope of the proposal have been raised by Congress.

Energy. House and Senate conferees also hope to finish negotiating the final version of the bipartisan, omnibus Energy Policy Modernization Act (S. 2012, H.R. 8). Among many other provisions, that bill would give the Energy Department emergency authority to protect the electric power grid from physical and cyber threats; require the Federal Energy Regulatory Commission (FERC) to expedite consideration of pipeline siting applications; ease procedures for mining certain minerals on federal lands; increase water allocations to address drought in California; and change forestry management.

There will also be a push to complete the Water Resources Development Act (WRDA). In September, both the Senate (S. 2848) and House (H.R. 5303) overwhelmingly passed bills that need to be reconciled, but the two chambers have not yet formally gone to conference. One factor that is likely to expedite a conference and floor votes is the fact that in September, in order to resolve a deadlock over government funding, Speaker Ryan made a commitment to move assistance to Flint, Michigan (which has faced a drinking-water crisis) as part of the WRDA bill.

Energy measures could also come up as Republican "riders" on a year-end spending bill, such as provisions blocking the EPA's Clean Power Plan or the "Waters of the U.S." wetlands rule. House Majority Leader McCarthy has also said the House will consider a bill offering a tax credit for new nuclear reactors.

Financial Services. House Financial Services Chairman Jeb Hensarling (R-TX) has said he hopes for a lame-duck floor vote on his CHOICE Act, which would repeal much of the Dodd-Frank Act and replace it with a system in which banks would become exempt from many prudential rules if they agree to a much higher leverage ratio. The committee passed the CHOICE Act on a party-line vote in September. The Wells Fargo scandal could pose a hurdle for that plan, because Hensarling's bill would repeal the Consumer Financial Protection Bureau's (CFPB) new rules limiting the use of mandatory arbitration clauses in bank contracts. Wells Fargo has been criticized for requiring its account holders to agree to such clauses, restricting their ability to sue the bank after as many as 2 million unauthorized accounts were discovered.

The Financial Services Committee will hold a second hearing on November 30 on the Wells Fargo issue, with CFPB Director Richard Cordray testifying. SEC Chairman Mary Jo White will also testify on November 15.

Tax

The surprising results of yesterday's election have teed up comprehensive tax reform as a clear priority for the new Republican President and the Republican Congress. A unified Republican government makes the process of achieving significant tax reform much more manageable next year, in particular because Speaker Ryan during the campaign pledged to move such a plan in the form of so-called budget reconciliation legislation, which would mean that only a simple majority of senators would be necessary to pass the plan, rather than the usual 60-vote majority. A lot of the groundwork has been laid through proposals and negotiations over the last three or four years on various key aspects of business tax reform, but Congressional Republican leaders and the new President will have to decide whether to push forward with legislation that embodies the House Republican Tax Reform Blueprint, or the outlines of a tax reform plan that President-elect Trump championed during the campaign. One significant difference is that the Blueprint, according to its authors, is largely revenue neutral using dynamic scoring, while the Trump plan was scored by various non-governmental groups as losing trillions of dollars.

House Speaker Ryan has said on multiple occasions that tax reform is his top priority. The Blueprint, the sixth and final plank of Ryan's "Better Way" campaign to provide policy alternatives, proposed a 20% statutory corporate tax rate, a 25% business tax rate for pass-through entities, a move toward a cash-flow consumption tax through immediate expensing for all businesses and elimination of deductibility of net interest expense, a territorial international tax system, a border tax adjustment mechanism, and elimination of most business preferences except the R&D tax credit and LIFO. Interestingly, all of these pieces of business tax reform may be fair game in discussions with Democrats, but the two parties differ greatly over whether to reduce individual tax rates – a key component of both the Blueprint and the Trump campaign agenda – and over important revenue issues, including whether reform should be revenue neutral on a static basis, and whether timing and one-time revenue raisers should be used to pay for permanent tax rate reduction. The use of budget reconciliation, however, could make many of these differences irrelevant as Senate Democrats could have little power to change or block the legislation on the Senate floor.

Along with the 20% statutory corporate tax rate, the Blueprint includes a 25% business tax rate for pass-through entities; and individual rates set at 12%, 25%, and 33%.

Ways and Means Republican tax staff is in the process of receiving feedback and building out the tax reform Blueprint by drafting detailed statutory language. The publicly expressed goal is to have that effort completed by the end of 2016. In October 14 remarks at University of Wisconsin–Madison, House Speaker Ryan said, "I really want to get tax reform running as quickly as possible..."

Asked September 29 whether there is opportunity for progress on big-ticket items in 2017, Senate Majority Leader McConnell said, "We need to do tax-reform – comprehensive tax-reform – not piecemeal."

Trump's tax plan differs from the Blueprint in that the corporate tax rate would be lower – 15% – with the same rate imposed on pass through entities. The latest statement from the Trump campaign suggests that small business owners do not retain earnings may face double taxation.

Individual income tax rates would be 12%, 25%, and 33%, the same as the House Republican tax reform Blueprint.

Trump and his staff have supported a 10% tax rate on the deemed repatriation of previously untaxed foreign earnings of US companies, but the campaign never made clear whether they still support repeal of deferral in a new international tax system going forward.

Trump has pledged to work with House Republicans on tax issues and, in addition to adopting their proposed individual rates, brought his plan closer to theirs by announcing support for immediate expensing of new business investments for manufacturers. The House plan proposed expensing in conjunction with eliminating the deductibility of net interest expense. In the follow-up to a September 15 speech to the Economic Club of New York, Trump clarified that he believes expensing should be limited to manufacturers and those who elect expensing will lose the deductibility of corporate interest expense.

The Trump campaign also clarified in September that they favored repeal of most corporate tax expenditures, except for the R&D Credit. While continuing to call for repeal of the estate tax, Trump proposed disallowing a step-up in basis for estates over $10 million: "The Trump plan will repeal the death tax, but capital gains held until death will be subject to tax, with the first $10 million tax-free as under current law to exempt small businesses and family farms. To prevent abuse, contributions of appreciated assets into a private charity established by the decedent or the decedent's relatives will be disallowed."

Tax

Trump additionally proposed capping itemized deductions at $100,000 for single filers and $200,000 for married filers and highlighted the benefits of his proposals for working Americans and the middle class. "By lowering rates, streamlining deductions, and simplifying the process, we will add millions and millions of new jobs. In addition, because we have strongly capped deductions for the wealthy, and closed special interest loopholes, the tax relief will be concentrated on the working and middle class taxpayer…," he said. "This is a working and middle-class tax relief proposal." A campaign fact sheet proclaims that Trump's economic proposals would add 25 million jobs over a decade, which equates to 200,000 new jobs per month.

The motivating factors for tax reform will remain the same as they were in the current Congress, but unified government should make enacting tax reform much easier. The statutory corporate income tax rate is seen as too high and the international tax system compels profit shifting to low-tax jurisdictions and erodes the US tax base. That phenomenon escalated this year with the European Commission's latest state aid decision, which was seen as demonstrating a tension between the US and Europe over who should tax the foreign income of US multinationals.

The passage of the EU's harmful tax competition directive will lead to enactment in all EU countries of a variety of measures that could increase taxes on US companies operating in Europe, while implementation of innovation box regimes in many countries, following the OECD BEPS project outline, will make it more attractive for US companies to move intellectual property and exploit that IP into those jurisdictions. The Administration took significant steps this year to try to prevent further erosion of the US tax base through regulatory action to deter inversions and earnings stripping, but all involved said these were Band-Aid approaches that were no substitute for US tax reform.

Design issues – international tax reform. As has been the case for the last few years, there is broad agreement on the design elements of business tax reform, and more specifically, international tax reform, but the devil is in the details. For example, the House Republican Blueprint on tax reform calls for a 8.75%tax rate on previously untaxed accumulated foreign earnings held in cash or cash equivalents, and a 3.5%tax rate on all other accumulated earnings, with tax liability payable over an eight-year period.

This is the same tax treatment of accumulated foreign earnings called for under former Ways and Means Committee Chairman Dave Camp's (R-MI) Tax Reform Act of 2014.

But in a departure from the Camp bill, the Blueprint also calls for a move to a destination-basis tax system, under which border adjustments exempt exports from tax while taxing imports, making the tax jurisdiction the location of consumption rather than production. Exempting exports from US tax and taxing imports regardless of where they are produced will eliminate incentives for US businesses to move or locate operations outside of the United States under a territorial tax system, according to the Blueprint. By relieving exports from US tax while imposing US tax on imports, the Blueprint would eliminate the need for any new exemption or territorial tax system to be accompanied by a minimum tax or any other more conventional anti-base erosion measure, thereby sidestepping one of the more intractable and divisive debates among the business community over the past several years of tax reform discussions.

Developing a workable border adjustability mechanism that is not actually a component of a value-added tax presents some significant policy and technical hurdles.

US companies that are net exporters could end up in a perpetual tax loss position, and handing out refunds to some of the largest US companies may not work from a political standpoint, particularly as the domestic income of US companies (including the suppliers for exporting companies) is subject to tax. How to apply the border adjustability concept to cross-border flows of capital, or whether to exempt financial transactions must also be considered.

While moving to a form of exemption system has some level of bipartisan support, more liberal Democrats will insist on a more pure worldwide system that includes repeal of deferral. Senate Finance Committee Ranking Member Wyden (intermittently) and Senator Warren (consistently) have both backed the latter approach, and Speaker Ryan noted the differing viewpoints in September given that Democrats increasingly call for a worldwide system and repeal of deferral.

Tax

"There is a big gulf between our two views... We believe that we should have a pure territorial system...And so I do believe that this issue is coming," Ryan said. "I don't think you can stand against a territorial system much longer." Ryan also remarked that "the experience I had when I was Ways and Means chair with [Democrats] was not a pleasant one, and I don't know if that's going to change."

In a September 8 New York Times op-ed, Senator Warren said foreign developments are increasing pressure on Congress to cut corporations "a new sweetheart deal" in tax reform, but lawmakers should instead take the opportunity to collect more revenue from corporations.

"Preferential tax treatment, either through special rates or deferred due dates, creates a huge financial incentive for American companies to build businesses and create jobs abroad rather than in the United States. Our tax code should favor jobs and businesses at home – period," Warren said.

Along with these political and mechanical questions, there is the question of whether such a system, embedded in an income tax rather than a value added tax or other true consumption tax, is legal from an international trade perspective.

Design issues – paying for rate reduction. There may also be tension among House Republicans given that the Blueprint has not had a full airing among members – it was released soon before Congress left for its summer recess – and the drafting of legislative language may make apparent what is necessary to achieve the stated goals, particularly the reduced rates: a 20% statutory corporate tax rate; a 25% business tax rate for pass-through entities; and individual rates set at 12%, 25%, and 33%. Once the details are hashed out, the Blueprint could present just as many trade-offs as previous serious tax reform proposals. While the mix of winners and losers may be different than under other proposals, the ultimate fate of the Blueprint will still be determined by the same fundamental political dynamics that would face any tax reform proposal.

For example, the Blueprint would permit companies to fully and immediately deduct the cost of all tangible and intangible property, with the exception of land. However, the Blueprint also would correspondingly deny deductions for net interest expense. Companies must therefore weigh whether losing interest deductions is a cost they are willing to incur in exchange for full expensing (and a 20% corporate rate).

The purpose for denying deductions for net interest expense is to prevent a presumed double benefit from fully expensing leveraged purchases of property.

However, the exclusion of land from full expensing under the Blueprint would be particularly severe for debt-financed purchases of land because the land would not be eligible for full expensing (or apparently even depreciation as under current law), while deductions for interest expense on the debt would not be permitted.

Moreover, the persistent issues under current law involving the allocation of purchase price between non-deductible land and immediately deductible improvements on the land would be intensified under the Blueprint. Other aspects of paying for a reduced corporate rate will not come easier in the new Congress. The allure of reducing business tax rates did not draw members to support the bill presented to them by former Ways and Means Chairman Dave Camp.

Corporate integration. In the Senate, Finance Committee Chairman Hatch continues to go his own direction on tax reform, touting a corporate integration plan that could be a substitute for or be complementary to a rate reduction effort that includes international tax reform. Hatch says he is still aiming to release a corporate integration discussion draft. Chairman Hatch has said the proposal could accomplish the international tax reform that is widely seen as necessary, and the reception to the draft could dictate how strongly he tries to advance the proposal next year. The draft is expected to pair a dividends-paid deduction with a mandatory 35% withholding tax for dividends and interest. Other senators and third parties have raised concerns about a corporate integration plan, including:

- that the proposed 35% withholding tax expected would penalize tax-exempt entities like retirement plans and deter foreign investment in the United States; and
- that a dividends paid deduction would, by reducing corporate tax liability, diminish the effectiveness of current tax incentives like the R&D credit and accelerated depreciation, and disadvantage startup companies more likely to retain their earnings rather than pay dividends.

Extenders. The fate of tax extenders (and certain other tax issues) will likely depend on both what can be accomplished during the 2016 lame-duck session and the success of the likely focus on tax reform in early 2017.

Tax

There is a push to include the provisions that expire at the end of 2016 in year-end legislation, though if that is unsuccessful the issue will certainly return in 2017, either through inclusion in a tax reform measure or separately if those efforts have played out.

The 2015 tax legislation made some extender provisions permanent and extended others for five years, meaning the two-year extensions that expire at the end of 2016 will be the focus of the next effort.

There will certainly be attention paid to these provisions during any discussion of tax extenders in 2017.

Tax treaties. Action on the eight Foreign Relations Committee-approved tax treaties that Senator Rand Paul (R-KY) wants renegotiated over information sharing concerns is seen as overdue. The treaties include: new protocols amending US tax treaties with Switzerland, Luxembourg, Spain and Japan; new tax treaties with Hungary, Chile and Poland; and a multilateral convention on tax administration. There have been no plans announced for trying to move the treaties during the lame-duck session, though such an effort is possible.

State tax issues. In August, House Judiciary Committee Chairman Goodlatte released a second discussion draft related to remote sales tax that would apply tax at the destination state of the goods, rather than on the location of the seller, which was his previous approach. The tax would be imposed at a single rate determined by the state of the purchaser, but using the tax base of the state of origin.

Chairman Goodlatte wanted a vote this year on the proposal, which had the support of Speaker Ryan, but this vote is not likely to occur during the lame duck session. When Congress approved a customs reauthorization measure that made permanent the Internet Tax Freedom Act in February, Senate Majority Leader McConnell said he had provided assurances to supporters of the Marketplace Fairness Act "that we'll have an opportunity to consider that sometime this year." Since that is not likely to occur during the lame-duck session, the issue is sure to resurface in 2017.

In September, the House approved by voice vote the Mobile Workforce State Income Tax Simplification Act (H.R. 2315), to prohibit wages earned by an employee who performs employment duties in more than one state from being subject to income tax in any state other than: (1) the state of the employee's residence, and (2) the state within which the employee is present and performing employment duties for more than 30 days during the calendar year. Senate Finance Committee member John Thune (R-SD) sponsors a Senate version of the bill (S. 386), though the outlook for the issue is unclear.

Health

With a Trump win and Republicans maintaining control of the House and Senate, the health agenda promises to be one of the greatest policy areas of change in the next Congress.

ACA Repeal/Replace. In January, following a 240-181 vote, the House sent to the President H.R. 3762, Restoring Americans' Healthcare Freedom Reconciliation Act – a piece of legislation which dismantled key provisions of the Affordable Care Act (ACA). The same legislation was approved in the Senate on a vote of 52 to 47. Although the President ultimately vetoed the legislation, it represents a blueprint for Congressional action in 2017 to repeal core components of the ACA.

The reconciliation process allows leaders to call up legislation and pass it with a simple majority vote in the Senate—avoiding a potential filibuster. Reconciliation rules in the Senate are complex, enforced by the Senate Parliamentarian, and constrained by CBO scoring rules and conventions – which combine to determine what can and cannot be included in a reconciliation bill. Reconciliation is a powerful tool but its use is limited to policy changes that have a direct impact on taxing or spending levels. Because they have used this process before, Republicans have a road map of the changes that will be possible through the use of reconciliation in a closely divided Senate. Find a link to a summary of the Reconciliation bill that passed in 2015 here. Donald Trump has been less prescriptive in terms of the specifics of the ACA replace plan that he supports. But generally, he has called for a special session of Congress to completely repeal the ACA and replace it with a plan that allows consumers to buy insurance across state lines, allow individuals to deduct the cost of health care on their federal tax returns, expand Health Savings Accounts (HSAs) and block grant Medicaid. Speaker Paul Ryan and the House GOP introduced a proposal to replace the ACA that can be found here. Because the Senate GOP did not introduce their own ACA replace plan, negotiations between the chambers will be required before a strategy is developed.

User Fee Legislation. The Senate HELP Committee and the House Energy and Commerce Committee are tasked with the reauthorization of the Prescription Drug User Fee Act (PDUFA), the Generic Drug User Fee Act (GDUFA), the Biosimiliar User Fee Act (BsUFA), the Medical Device User Fee and Modernization Act (MDUFMA). These programs must be reauthorized in 2017 to ensure that sufficient industry fees are available for the FDA to continue to consider the applications of drugs and devices.

The Food and Drug Administration (FDA) and relevant industries have reached draft agreements on the user fee proposals. The proposals are historically bipartisan priorities and are expected to be approved by Congress next year. Some of the drug pricing issues raised by Democrats in 2016 could potentially become embroiled in the FDA user fee legislation negotiations. Even though Donald Trump has voiced some populist concerns about the increasing cost of prescription drugs, the risk of drug pricing policy changes being enacted next year are less likely given that Hillary Clinton did not win the White House and the GOP continues to control the House and Senate. But Democrats are likely to continue to highlight the issue and seek policy changes to address it.

Mental Health/ Opioids. Currently, discussions are ongoing to find a compromise that can be enacted on mental health legislation in the lame duck Congress and possible further action to address the opioid addiction crisis that was such a big issue in so many election campaigns. But disagreements over funding levels, gun issues and the privacy of medical records persist. It remains to be seen if negotiators can reach agreement on these issues in the lame duck session of Congress or if the issue will be revisited in the next Congress.

MACRA Oversight. Congressional oversight of the Centers for Medicare & Medicaid Services' (CMS) implementation of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) is expected to continue following several House and Senate hearings held over the past several months and recent publication of a final rule on the matter.

In 2015 Congress passed MACRA which overhauls how Medicare pays for physician services. The legislation repealed the Medicare physician sustainable growth rate (SGR) formula and instead moves to a new two-track payment system called the Quality Payment Program (QPP). The two tracks of the QPP seek to tie an increased percentage of physicians' Medicare fee-for-service payments to outcomes through the Merit Based Incentive Payment System (MIPS) and also to encourage the adoption of alternative payment models (APMs).

At recent House and Senate hearings, members from both parties expressed concern about MACRA's potential adverse impact on smaller independent and rural physician practices. While the final rule attempts to address these concerns, it is expected that Congress will continue to utilize its oversight power to monitor implementation.

Health

Healthcare Reauthorization Priorities. The Children's Health Insurance Plan (CHIP) will expire and needs to be reauthorized in 2017. CHIP is a federal and state partnership program which provides health coverage to an estimated 8.9 million low-income children. In 2015, President Obama signed the Medicare Access and CHIP Reauthorization Act which extended CHIP for an additional two years; without an extension of the program in 2017 the program will exhaust its funding and states will be required to continue the children's coverage through Medicaid until 2019, due to the ACA's maintenance of effort (MOE) provision unless the ACA is repealed. The reauthorization process will create an opportunity to consider additional policy changes including changes to the CHIP and Medicaid programs.

The ACA also created a funding stream for community health centers. In 2015, a bipartisan vote in Congress extended the Community Health Center Fund by an additional two years (FY 2016 and FY 2017). It is likely that lawmakers will push to extend funding of community health centers into future years beyond 2017.

Chronic Care. In late October, Senate Finance Committee Chairman Hatch and Ranking Member Wyden along with Senators Johnny Isakson (R–GA) and Mark Warner (D-VA), co-chairs of the Finance Committee Chronic Care Working Group, released a discussion draft with proposals to improve health outcomes for Medicare beneficiaries living with chronic conditions. Potential Senate legislative action on the discussion draft is possible in the lame duck session, but it is also possible the bill will be taken up in the next Congress.

Energy

Donald Trump is widely expected to significantly depart from the priorities of the Obama Administration by favoring development of additional conventional energy resources and attempting to put the brakes on new environmental initiatives. The GOP majorities in the House and Senate have a similar agenda and Democrats in Congress are expected to mobilize in opposition -- in particular by leveraging their power in the Senate to filibuster legislation – and publicly highlight the potential impacts of a Trump administration's policies.

Trump has pledged to cancel US participation in the 2015 Paris Climate agreement, and opposes implementation of the Obama Administration's Clean Power Plan (CPP). His campaign literature is heavily salted with proposals to provide regulatory relief to fossil fuel industries and slanted in favor of new administrative initiatives to foster conventional energy development. Specifically, his website calls for the following energy-related initiatives:

- Make America energy independent, create millions of new jobs, and protect clean air and clean water; conserve our natural habitats, reserves and resources; unleash an energy revolution that will bring vast new wealth to our country.
- Declare American energy dominance a strategic economic and foreign policy goal of the United States.
- Unleash America's $50 trillion in untapped shale, oil, and natural gas reserves, plus hundreds of years in clean coal reserves.
- Become, and stay, totally independent of any need to import energy from the OPEC cartel or any nations hostile to our interests.
- Open onshore and offshore leasing on federal lands, eliminate moratorium on coal leasing, and open shale energy deposits.
- Encourage the use of natural gas and other American energy resources that will both reduce emissions but also reduce the price of energy and increase our economic output.
- Rescind all job-destroying Obama executive actions. Mr. Trump will reduce and eliminate all barriers to responsible energy production, creating at least a half million jobs a year, $30 billion in higher wages, and cheaper energy.

Given the predominance of oil and gas executives amongst his kitchen cabinet, it is also widely expected that President-elect Trump will try to halt additional environmental regulatory measures proposed by the Obama Administration, such as methane emission curbs. It should be noted that it is difficult legally to change or repeal regulations which have been promulgated in final form – such as the CPP – without going through the Administrative Procedures Act process. Environmental lawyers can be expected to litigate at every step of the way if Trump attempts to bypass Congress and eliminate the CPP by Executive Order, and the courts may well serve as a brake on such actions. However, environmental advocates who would have likely tried to push a President Clinton to administratively expand the scope of the CPP's carbon emission regulations beyond the electric power sector, potentially economy-wide under Section 115 of the Clean Air Act, may now be left to using a litigation route to try to force the Environmental Protection Agency to expand the CPP to achieve this goal.

During the campaign, Trump also specifically rejected the idea of using a carbon tax/carbon pricing as a means of encouraging market-driven emission reductions. With GOP chairmen of the tax-writing committees in the House and Senate, it is very unlikely that they will schedule hearings or markups to move carbon taxes – other than to schedule votes in the House or Senate aimed at undermining vulnerable Democrats up for reelection in 2018.

Additionally, the President-elect has vowed to allow energy infrastructure projects, like the Keystone Pipeline and other industrial facilities which have faced denials or delays under the current Administration, to move forward. Trump has proposed a $1 trillion infrastructure plan that would rely heavily on private-public partnerships by providing a tax credit to encourage private investors to fund projects overseen by states and municipalities. As conceived by Trump's advisors, the tax credit would apply to infrastructure projects with a dedicated source of revenue, such as toll roads, airports or utilities financed at least in part by fees paid by users. Decisions on which projects to fund would generally be left to the states.

Energy

Trump's tax reform plans generally adhere to the precepts of the House Republican tax reform Blueprint, but he differs with that outline in some important respects. The House Blueprint proposes, among other things, to allow 100%expensing of qualified business investments and to deny the deductibility of net business interest expenses. It would also eliminate most fossil fuel-specific tax incentives such as deductions for intangible drilling costs (IDCs) and percentage depletion, but its proposal to allow expensing of all business investment would mitigate the loss of many of the specific deductions. The Blueprint appears to allow both independent and integrated producers to deduct 100%of IDCs in the year they are paid or incurred. While this would preserve the status quo for independent producers, allowing integrated oil and gas companies to also expense 100%of IDCs could increase the rate of return on oil and gas wells drilled by integrated companies. This change, in combination with the possible loss of the percentage depletion deduction (which allows cost recovery in excess of cost basis) could ultimately make independent producers less competitive with integrated companies.

Trump offered qualified support for the Blueprint's proposal to allow 100%expensing – but would limit the provision to manufacturers – and those who elect expensing will lose the deductibility of business interest expenses. Further, he may be more inclined to keep traditional fossil fuel-specific tax incentives, such as the deduction for intangible drilling costs and the percentage depletion deduction.

While President-elect Trump has spent much of his time discussing federal policy issues surrounding conventional energy resources, he has expressed opposition to continued federal support for the development of wind and solar energy and has said that he will eliminate all federal spending for clean energy research. How he proceeds in the new Congress may be heavily influenced by both electoral politics (e.g., ethanol-rich Iowa largely supported his candidacy) and the pre-existing dynamics in Congress. Many congressional Republicans have opposed even temporary extensions of renewable energy incentives and the fate of these provisions may well be linked to the effectiveness of the Democratic minority.

Financial Services

Republicans' retention of the House and Senate majorities means that President-elect Trump will have partners in both banking committees to help implement an agenda heavy on deregulation. The new Senate Banking Committee chairman will be Mike Crapo (R-ID), who has a solid working relationship with returning Ranking Member Sherrod Brown (D-OH) and could work productively with him in a handful of areas. On the House side, Rep. Jeb Hensarling (R-TX) returns as chairman of the Financial Services Committee. A fierce opponent of the 2010 Dodd-Frank Act, Hensarling will have Trump's support in renewing his effort to repeal and replace the Dodd-Frank Act and continuing the panel's aggressive oversight of financial regulators. Given Republicans' narrow majority in the Senate, Democrats' ability to filibuster controversial bills in that chamber will make it difficult for House and Senate GOP leaders to push through a broad dismantling of major elements of Dodd-Frank, something the President-elect called for during the campaign. But given that Republicans will have full control of the executive and legislative branches for the first time since 2006, the GOP base will be dismayed if they don't try anyway. Short of that broader effort, bipartisan compromises in the areas of bank capital and regulatory relief for smaller banks seem achievable.

Senate Banking Committee. Crapo is widely seen as working constructively with Sen. Brown – a stark contrast to Brown's relationship with current Chairman Richard Shelby (R-AL), who has been unable to agree with Democrats on much legislatively. In a July interview, Crapo called Brown "straightforward and honorable" and said that while they were far apart in terms of their political views, "the fact is we have been able to find significant areas of consensus where we can agree to move forward on good policy, so I expect that we would be able to do that." The leading options for an early bipartisan effort include a bill providing regulatory relief from some Dodd-Frank provisions to community banks, a high priority for both Crapo and Brown. Such a bill might include language raising Dodd-Frank's $50 billion asset threshold, above which banks must submit to more rigorous prudential supervision by the Fed. Crapo and Brown also could agree on modest structural changes to the Federal Reserve, unless pressure from the Trump White House for a more ambitious Fed reform bill – like the package of changes passed by the House in November 2015 – derails that effort. Crapo and Brown could also conceivably agree on more stringent capital standards for the largest banks, a theme that Brown hammers at every opportunity.

As Shelby did, Crapo is expected to maintain the committee's focus on rules and bodies created by the Dodd-Frank Act, such as the Financial Stability Oversight Council (FSOC) and the Consumer Financial Protection Bureau (CFPB), which suffered a judicial setback when a federal appeals court on October 11 ruled that its structure was unconstitutional. Crapo has also been skeptical of the new supervisory authorities the 2010 law gave the Fed to oversee larger banks and insurers that are designated as systemically important by the FSOC. Crapo could work collaboratively with Ranking Member Brown on a legislative follow-up to the Fed's recent report criticizing banks' trading of physical commodities; one obvious possibility is to repeal the merchant banking exemption given to the holding companies for Goldman Sachs and Morgan Stanley, as the Fed recommended. Finally, a post-crisis system for housing finance – i.e., the future of Fannie Mae and Freddie Mac – still looms as the biggest area left unaddressed by the 2010 financial reforms, but a bipartisan effort to establish a new system drafted by Crapo and then-Chairman Tim Johnson (R-SD) in 2013-14 foundered when the Banking Committee's liberal Democrats (and some Republicans) declined to support the centrist proposal. Since then, few signs have emerged about how to structure a new housing finance system in a way that could survive a Senate filibuster, and President-elect Trump did not address the issue during his campaign.

House Financial Services Committee. After years of confrontation with a Democratic White House and Democratic appointees to financial regulators, Chairman Hensarling will shift strategies now that the executive branch is in more friendly hands. Hensarling is not likely to improve his contentious relationship with Rep. Maxine Waters (D-CA), however, who will return as ranking member and is certain to push back on Hensarling's efforts to replace the 2010 reforms with more conservative approaches. While Hensarling has regularly done battle with officials at the FSOC, Treasury, SEC and the Fed, new leadership is expected at those agencies – though even Republican appointees will be constrained by the existing statutory mandates in Dodd-Frank, unless the new Congress is able to alter the law with legislation. At the Fed, Chairman Janet Yellen's term does not expire until January 2018. President-elect Trump frequently criticized Yellen as being overly "political" during the campaign.

Financial Services

During the four previous years of Hensarling's chairmanship, most of the committee's major bills died quietly in the Senate, such as efforts to repeal much of Dodd-Frank (the CHOICE Act), impose substantial reforms upon the Fed, restructure the CFPB and strip the FSOC of various powers. That may change now that the House, Senate and White House will operate with greater coordination, though the threat of the Senate filibuster limits what Republicans can achieve. Hensarling notably has enjoyed a longtime friendship with Vice President-elect Mike Pence, which will give him a powerful ally in the White House as the new administration plots its strategy for financial regulation and nominates key appointees for the regulatory agencies. Hensarling agrees with Senators Crapo and Brown on the importance of capital for big banks, but he wants to reward banks with relief from much of Dodd-Frank's supervisory regime if they agree to a higher leverage ratio. Hensarling can be expected to reintroduce his CHOICE Act and Rep. Bill Huizenga's (R-MI) package of Fed reforms (the FORM Act), and to renew the panel's aggressive oversight of the CFPB, the FSOC and other bodies established by Dodd-Frank. Republicans have also been critical of moves by global regulatory bodies to set capital and liquidity rules for "systemically important" banks and insurance companies.

Wells Fargo Scandal. Lawmakers in both the House and Senate are certain to resume their investigations of Wells Fargo in the wake of revelations that the bank's employees created as many as 2 million accounts without customers' consent. Hensarling and other Republicans want to use the scandal to raise questions about the performance of the CFPB and the Office of the Comptroller of the Currency (OCC), while Ranking Member Waters has vowed to offer a bill breaking up Wells Fargo into smaller companies. On the Senate side, Ranking Member Brown has used the scandal to focus on mandatory arbitration provisions in financial contracts, and will likely propose legislation prohibiting such clauses, though Sen. Crapo is unlikely to support him. In an editorial piece in October, Camden Fine, president of the Independent Community Bankers of America (ICBA), wrote that he "fully expected" that Wells Fargo's new policy of notifying customers whenever a new account is created in their name, along with "far more stringent policies, will ultimately become mandatory as policymakers respond to the scandal with additional regulatory burdens on banks of all sizes."

Oversight of Regulators. As they have in previous years, the banking committees in 2017 will devote considerable time to overseeing rules issued by financial regulators. These will include the still-unfinished interagency rules for clawing back incentive compensation drafted by the SEC, the Fed, the FDIC and other agencies; the CFPB's controversial new rules for prepaid cards, payday lenders and mandatory arbitration clauses; the global Financial Stability Board's forthcoming regulations for capital held by large insurers; and the international Basel Committee's rules for bank capital, which are expected to be issued by the end of this year. The Banking Committee must also schedule hearings for high-level Treasury nominees, as well as nominees for key vacancies at the SEC, CFTC, the Federal Reserve and the Ex-Im Bank, which were never filled in the current Congress because of lingering disputes with the Obama administration.

Two Deadlines to Watch: 1) the largest banks resubmit their "living will" resolution plans in May 2017, always a source of contention for critics of "too big to fail"; 2) the Terrorism Risk Insurance Act (TRIA) expires at the end of 2017, forcing yet another ideological dispute over whether the federal backstop program should be renewed.

Trade

Trade legislative issues could figure prominently in 2017. During the campaign, President-elect Trump argued vigorously against the proposed Trans-Pacific Partnership (TPP), vowed to renegotiate the North American Free Trade Agreement (NAFTA) and pledged to label China as a currency manipulator, which could trigger the imposition of significant tariffs on Chinese imports.

Senate Finance Committee. President-elect Trump may find himself somewhat at odds on his trade agenda with Senate Finance Committee Chairman Hatch who has supported numerous trade agreements during his congressional tenure.

House Ways and Means Committee. House Republican trade leaders – including Speaker Ryan and Ways and Means Chairman Brady – played a pivotal role in advancing President Obama's trade initiatives through Congress, including passage of Trade Promotion Authority (TPA) in 2015. A key question is how closely they will work to support President-elect Trump's trade restrictionist agenda.

Trans-Pacific Partnership Agreement. Unless TPP can be approved in the 2016 lame-duck session (an extremely unlikely prospect, as discussed above), TPP will not be ratified.

Transatlantic Trade and Investment Partnership Agreement. US and EU trade negotiators failed to make much meaningful progress on TTIP in 2016. Prospects for TTIP are dim, given the President-elect's trade priorities and a potential chill in US-EU relations.

Other trade agreements? The Trade Promotion Authority, enacted in 2015, provides enhanced fast-track procedures for trade agreements reached before July 1, 2018, with a possible extension to July 1, 2021. Will President-elect Trump decide to launch additional trade agreements that could be considered under the fast-track authority in Congress? Following the U.K. vote on Brexit this summer, some Members of Congress expressed an interest in a possible US-U.K. free trade agreement.

From: [redacted]
Sent: 11/22/2016 5:55:37 PM
To: Jeffrey [jeevacation@gmail.com]

Importance: High

My Mom's childhood friend from Ukraine reached out to her - she works for Oleksandr Vilkul (Ukraninan opposition leader), asked if I could help organize the invitation to the Trump inauguration for a high reward. Shall I find out the details or drop it? Any interest in meeting them at all

I personally don't know Tamara (my Mom's friend) and my Mom hasn't seen her for years

From: paul krassner [[redacted]

Sent: 3/22/2017 2:35:34 PM

To: jeffrey E. [jeevacation@gmail.com]

Subject: Fwd: Wednesday's Headlines: Labor pick cut deal with billionaire accused of having sex with minors

Importance: High

JEFFREY—

AS A FRIEND I'M SAYING MY ATHEIST PRAYERS FOR YOU.

DON'T LET THE BASTARDS FRAME YOU.

—PAUL

From: The Washington Post <email@e.washingtonpost.com>
Subject: **Wednesday's Headlines: Labor pick cut deal with billionaire accused of having sex with minors**
Date: March 22, 2017 at 3:03:03 AM PDT
To: [redacted]

Democracy Dies in Darkness

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The morning's most important stories, selected by Post editors

Top Stories

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Labor pick cut deal with billionaire accused of having sex with minors

President Trump is a witness in a lawsuit over how federal prosecutors — including Alexander Acosta, a former U.S. attorney in Miami who is Trump’s secretary of labor nominee — handled the accusations against billionaire Jeffrey Epstein.

By Marc Fisher • Read more »

Trump tells GOP critics of health-care bill: ‘I’m gonna come after you’

The president stormed Capitol Hill to sell the health-care overhaul, using both charm and admonishment to make his case, reassuring skittish members that they would gain seats in Congress if the bill passed. Rep. Harold Rogers, a supporter of the bill, said of the president's remark: “Oh, he was kidding around. I think.”

By Mike DeBonis, Kelsey Snell and Robert Costa • Read more »

Gorsuch says attacks on federal judges are ‘disheartening’ and ‘demoralizing’

Under questioning, Supreme Court nominee Neil Gorsuch reiterated what he had told senators in private — that he is offended by attacks like the ones leveled by President Trump against federal judges who have ruled in cases involving him.

By Robert Barnes and Ed O'Keefe • Read more »

Trump’s budget targets rural development programs that provide a quiet lifeline

As a political statement, Trump’s budget proposal delighted many small-government conservatives. But voters in Kentucky’s Appalachia, an area that supports the president, worry that vital community programs that enhance job prospects and keep towns afloat might suffer.

By Jose A. DelReal • Read more »

Yazidis who suffered genocide are fleeing again, but this time not from the Islamic State

At a strategic crossroads between Syria, Turkey and Iraq, the traditional Yazidi heartland has become a flash point for Kurdish political rivalries. “We feel like a toy in the hands of the politicians,” a Yazidi religious sheikh said.

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Opinions

Susan Rice: When the White House twists the truth, we are all less safe

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Good-golly Gorsuch may turn out to be a rascal on the bench

By Dana Milbank • Read more »

President Trump's sanest decision

By Kathleen Parker • Read more »

Trump has no idea how to grow vegetables

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Reality is creeping into the Trump show

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The Trump administration's attack on the Chesapeake Bay

By Editorial Board • Read more »

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[North Korean missile explodes seconds after launch]

The attempted missile launch comes at a time of heightened tensions in the region, with the U.S. and South Korea conducting joint military exercises and the Trump administration clearly signaling it is prepared to use force to stop the Kim regime.

By Anna Fifield • Read more »

Trump's 'big, beautiful wall' at U.S.-Mexico border will require him to take big swaths of other people's land

The wall will cost a lot more — politically and economically — than the president has publicly acknowledged. Trump will need to wield the power of government to forcibly take private properties, including those belonging to his supporters.

By Tracy Jan • Read more »

As Ivanka Trump's White House role expands, her company is sued for unfair competition

A San Francisco clothing retailer says President Trump, his daughter and his aides have leveraged the presidency to promote products from Ivanka Trump's brand.

By Matea Gold • Read more »

As White House seeks distance, former Trump campaign chairman faces new corruption allegations

Tillerson, NATO look for new date for meeting with foreign ministers

A Ukrainian lawmaker claimed documents show Paul Manafort attempted to hide payments he received from a political party with ties to Russia. Manafort has denied assisting Russia in election hacks and a spokesman called the new Ukraine allegations “baseless.”

By Rosalind S. Helderman, Andrew Roth and Tom Hamburger • Read more »

The effort came after news that Secretary of State Rex Tillerson would miss a NATO summit meeting and later travel to Russia. As officials tried to schedule a new meeting, all sides insisted that Tillerson meant no disrespect in deciding to skip the April 5 gathering.

By Karen DeYoung • Read more »

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To whom it may concern:

I met Jeffrey Epstein half a dozen years ago. We have been in regular contact since, with many long and often in-depth discussions about a very wide range of topics, including our own specialties and professional work, but a host of others where we have shared interests. It has been a most valuable experience for me.

In the area of his own direct engagements, I have learned a great deal from him about the intricacies of the global financial system, about complex technical issues that arise in the often arcane world of finance, and about specific cases in which I have a particular interest, such as the financial situation in Saudi Arabia and current economic planning and prospects there. Jeffrey invariably turns out to be a highly reliable source, with intimate knowledge and perceptive analysis, commonly going well beyond what I can find in the business press and professional journals.

Turning to my own special interests in linguistics, cognitive science, and philosophy of language and mind, Jeffrey constantly raises searching questions and puts forth provocative ideas, which have repeatedly led me to rethink crucial issues.

We have also had (for me) very rewarding discussions on many other topics, for example the prospects for Artificial Intelligence, deep learning, multi-layered neural nets, automation and robotics, singularity, and related matters, exploring the claims and predictions and looking closely at the results that have been achieved, their intellectual contributions and social import. We have also discussed many other issues, ranging from intellectual history, to world affairs and contemporary geopolitics, to foundations of mathematics, to such matters as recent discoveries about communication in the plant world. He has also tried, so far with limited success, to carry forward my wife Valeria's efforts to introduce me to the world of jazz and its wonders. Whatever comes up, Jeffrey not only has a lively interest but also unconventional and challenging ideas and thoughtful suggestions.

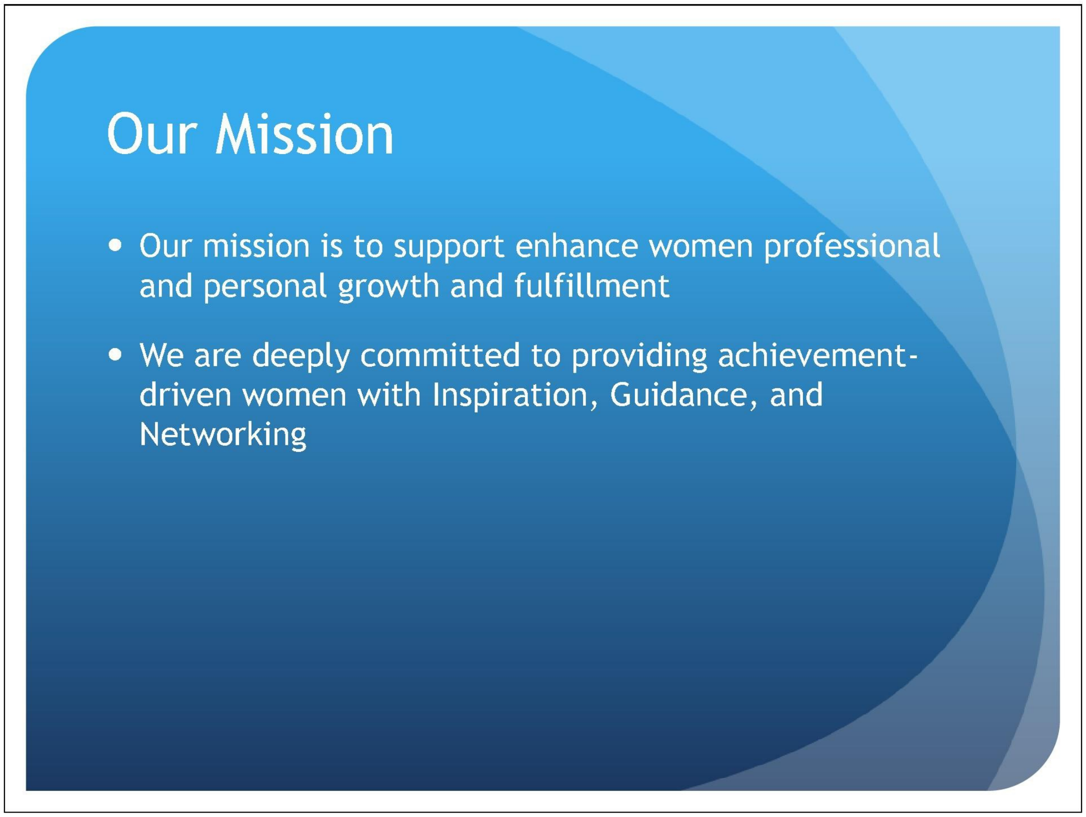
Given the range and depth of his concerns, I suppose I should not have been surprised to discover that Jeffrey has repeatedly been able to arrange, sometimes on the spot, very productive meetings with leading figures in the sciences and mathematics, and global politics, people whose work and activities I had looked into though I had never expected to meet them. Once, when we were discussing the Oslo agreements, Jeffrey picked up the phone and called the Norwegian diplomat who supervised them, leading to a lively interchange. On another occasion, Jeffrey arranged a meeting with former Israeli Prime Minister Ehud Barak, whose record I had studied carefully and written about. We have our disagreements, but had a very fruitful discussion about a number of controversial matters, including one that was of particular interest to me: the Taba negotiations of January 2001, in the framework or President Clinton's "parameters," events that remain obscure and controversial because the diplomatic record is still mostly secret. Barak's discussion of the background was illuminating, also surprising in some ways. In very different areas, much the same was true in meetings Jeffrey arranged with evolutionary biologists, neuroscientists, mathematicians and computer scientists, several of them engaged in exciting work at the limits of understanding in their fields, sometimes with perspectives quite different from mine. More lively interchanges, in which Jeffrey was once again an active participant, often an effective gadfly.

The impact of Jeffrey's limitless curiosity, extensive knowledge, penetrating insights, and thoughtful appraisals is only heightened by his easy informality, without a trace of pretentiousness. He quickly became a highly valued friend and regular source of intellectual exchange and stimulation.

Noam Chomsky
Institute Professor (emeritus), MIT; Laureate Professor, U. of Arizona

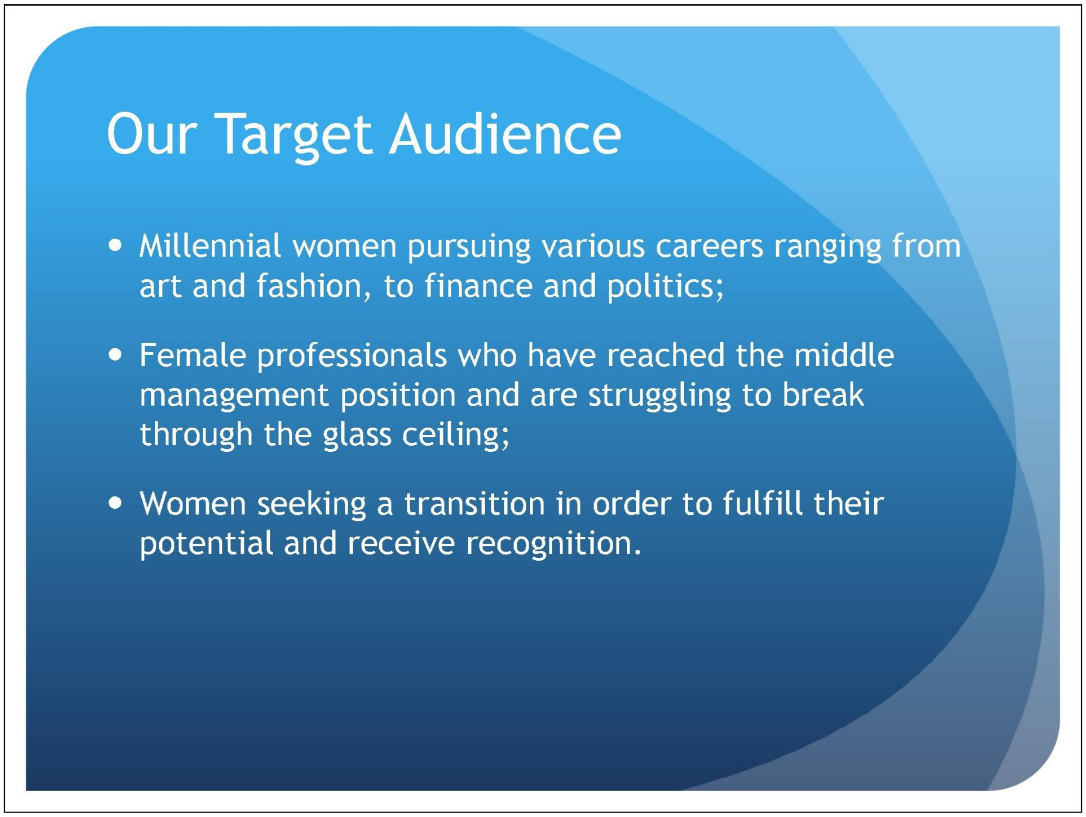
Women Advance

Women Empowerment and Self-realization



Our Mission

- Our mission is to support enhance women professional and personal growth and fulfillment
- We are deeply committed to providing achievement-driven women with Inspiration, Guidance, and Networking



Our Target Audience

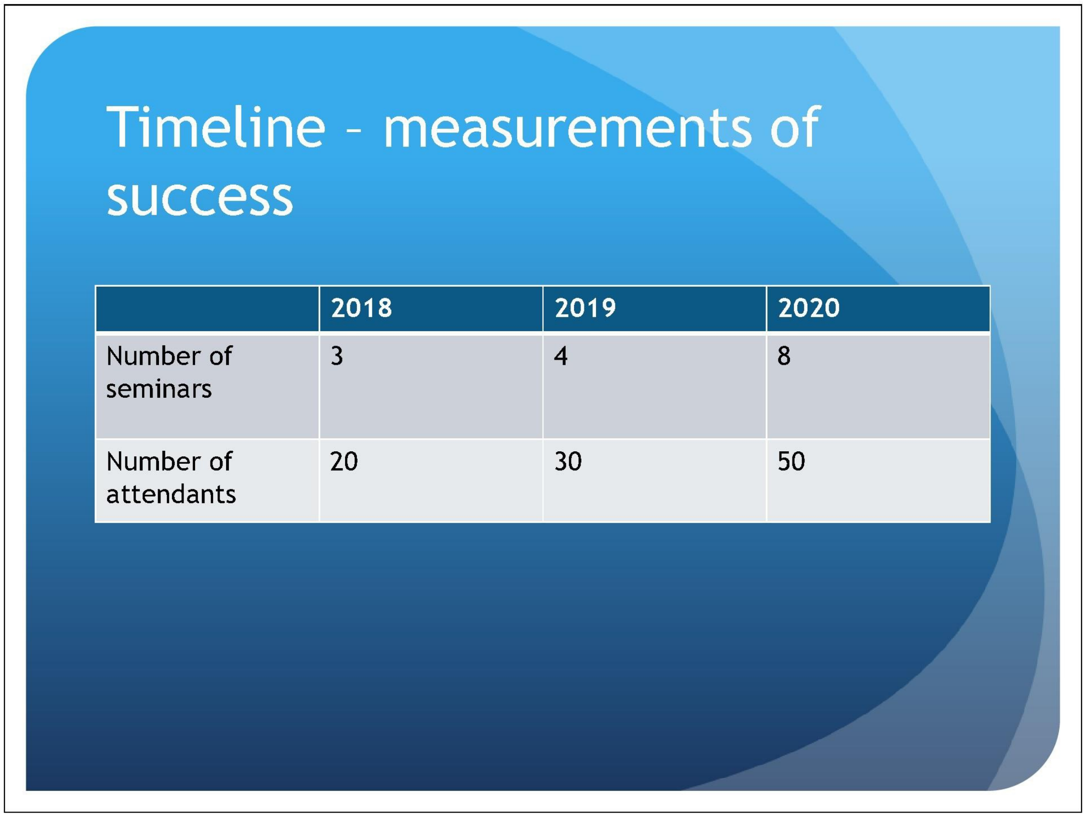
- Millennial women pursuing various careers ranging from art and fashion, to finance and politics;
- Female professionals who have reached the middle management position and are struggling to break through the glass ceiling;
- Women seeking a transition in order to fulfill their potential and receive recognition.

Our Approach

- We organize and conduct seminars with women speakers leaders in their industry
- TED Talks for Women in a seminar format
- We connect women with mentors in the industries of their interest

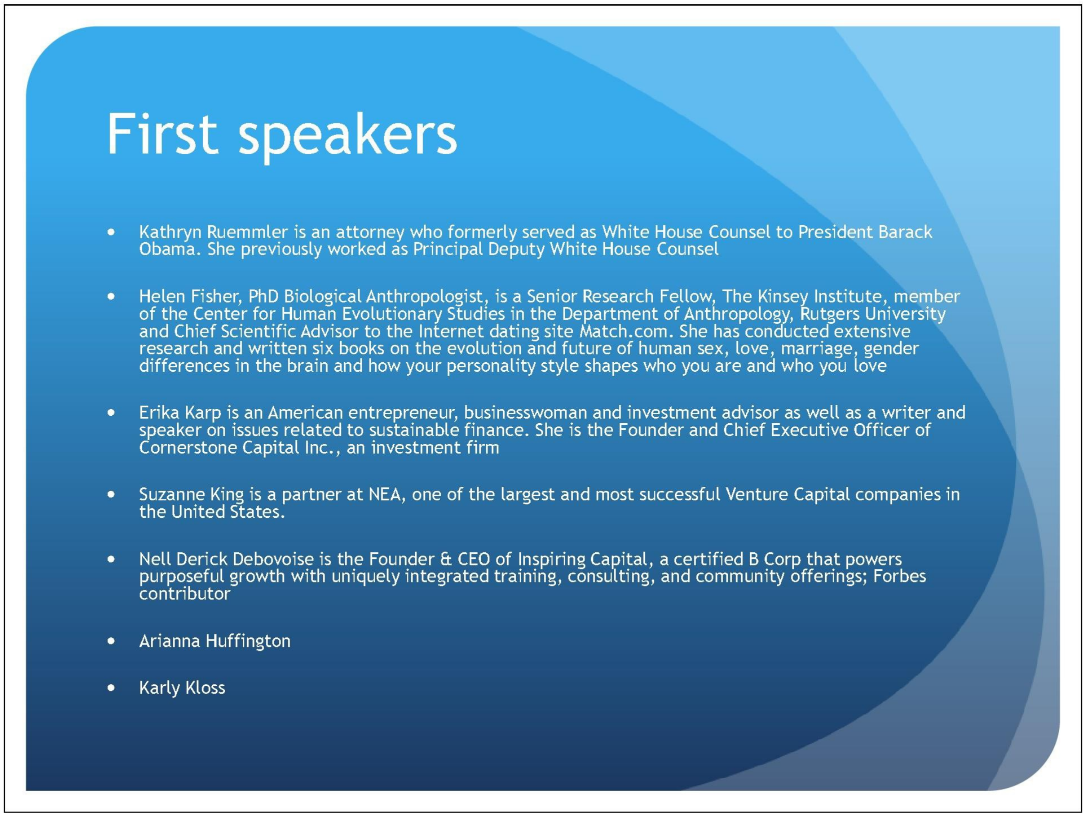
Topics of interest

- Sexual harassment
- Sexual abuse
- Negotiations/ salary and promotion negotiation skills
- Gender inequality, sexual discrimination, income disparity
- Women founders
- Communication challenges
- Conflict management skills for women
- Building leadership skills
- Obstacles in the way of success and the way to overcome them



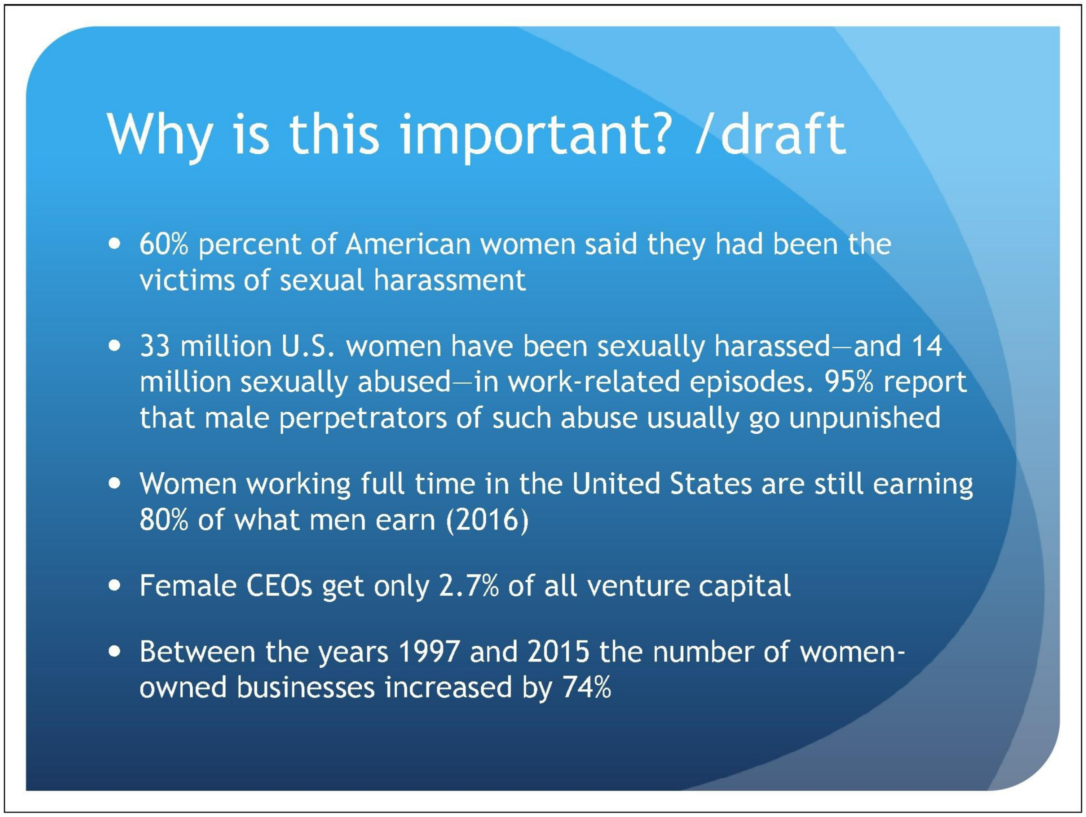
Timeline – measurements of success

	2018	2019	2020
Number of seminars	3	4	8
Number of attendants	20	30	50



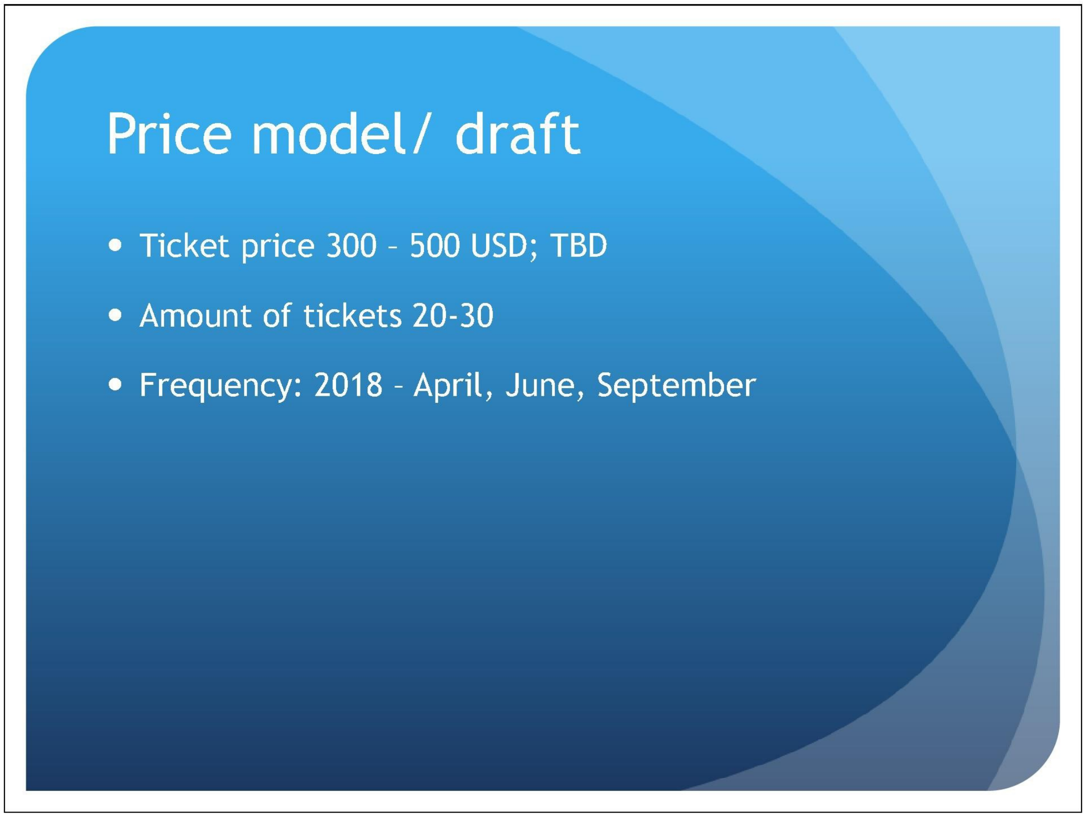
First speakers

- Kathryn Ruemmler is an attorney who formerly served as White House Counsel to President Barack Obama. She previously worked as Principal Deputy White House Counsel
- Helen Fisher, PhD Biological Anthropologist, is a Senior Research Fellow, The Kinsey Institute, member of the Center for Human Evolutionary Studies in the Department of Anthropology, Rutgers University and Chief Scientific Advisor to the Internet dating site Match.com. She has conducted extensive research and written six books on the evolution and future of human sex, love, marriage, gender differences in the brain and how your personality style shapes who you are and who you love
- Erika Karp is an American entrepreneur, businesswoman and investment advisor as well as a writer and speaker on issues related to sustainable finance. She is the Founder and Chief Executive Officer of Cornerstone Capital Inc., an investment firm
- Suzanne King is a partner at NEA, one of the largest and most successful Venture Capital companies in the United States.
- Nell Derick Debovoise is the Founder & CEO of Inspiring Capital, a certified B Corp that powers purposeful growth with uniquely integrated training, consulting, and community offerings; Forbes contributor
- Arianna Huffington
- Karly Kloss



Why is this important? /draft

- 60% percent of American women said they had been the victims of sexual harassment
- 33 million U.S. women have been sexually harassed—and 14 million sexually abused—in work-related episodes. 95% report that male perpetrators of such abuse usually go unpunished
- Women working full time in the United States are still earning 80% of what men earn (2016)
- Female CEOs get only 2.7% of all venture capital
- Between the years 1997 and 2015 the number of women-owned businesses increased by 74%



Price model/ draft

- Ticket price 300 – 500 USD; TBD
- Amount of tickets 20-30
- Frequency: 2018 – April, June, September

Creative ideas/ draft

- Combine with useful healthy activities
- Beauty rituals workshops
- Nutrition/ fitness
- Retreats
- Branded events/ sponsors

P A R K   P A R T N E R S
320 EAST 82 ST | NEW YORK | NY

November 23, 2015

Dear Partner,

I hope this letter finds you well – please see the below updates on the Park Mansion:

I am happy to report that we have completed the building's demolition stage. I have included a few photos for your reference.

Furthermore, we are very close to filling our building permit and we have finalized our design for the units. Please see the attached plans. The team is finishing interviews with General Contractors (GCs) and has come down to the final five GCs that will be allowed to bid on the project.

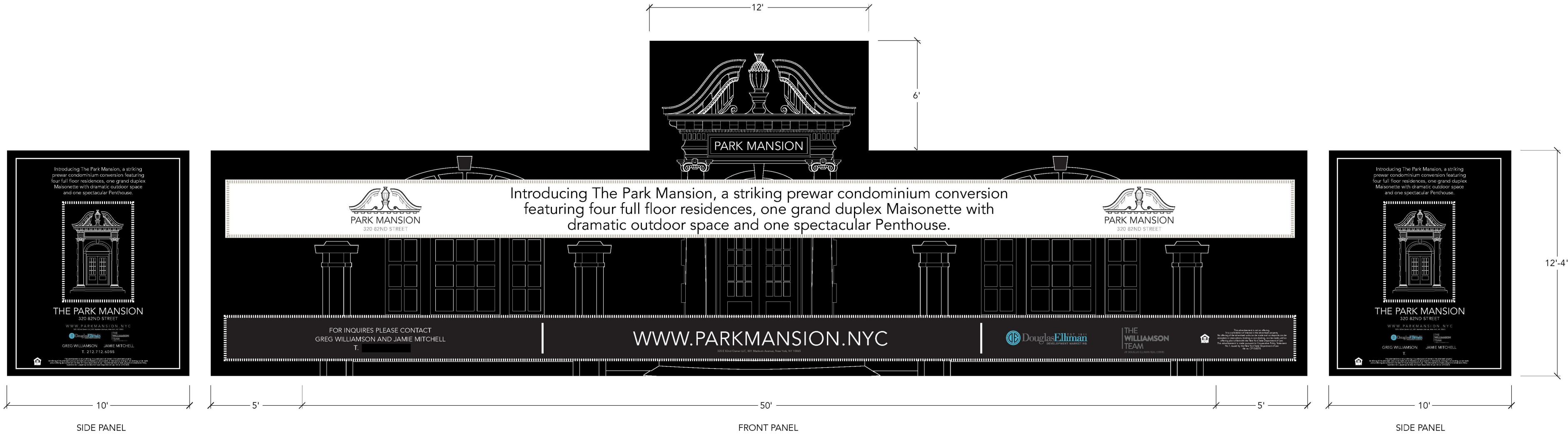
Additionally included are visuals for the sidewalk shed and a rendering for the website.

Please fell free to contact me if you have any questions at [redacted] or [redacted].

Thank you so much for your trust and friendship,

David J. Mitchell

801 Madison Avenue, New York, NY 10065
[redacted]


12'
6'
12'-4"
10'
SIDE PANEL
5'
50'
5'
FRONT PANEL
10'
SIDE PANEL
PARK MANSION
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THE WILLIAMSON TEAM AT DOUGLAS ELLIMAN REAL ESTATE

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THE PARK MANSION
320 82ND STREET
WWW.PARKMANSION.NYC

GREG WILLIAMSON JAMIE MITCHELL
T. 212.712.6088

Introducing The Park Mansion, a striking prewar condominium conversion featuring four full floor residences, one grand duplex Maisonette with dramatic outdoor space and one spectacular Penthouse.

FOR INQUIRES PLEASE CONTACT
GREG WILLIAMSON AND JAMIE MITCHELL
T. [redacted]

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320 E 82nd Owner LLC, 801 Madison Avenue, New York, NY 10065

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Introducing The Park Mansion, a striking prewar condominium conversion featuring four full floor residences, one grand duplex Maisonette with dramatic outdoor space and one spectacular Penthouse.

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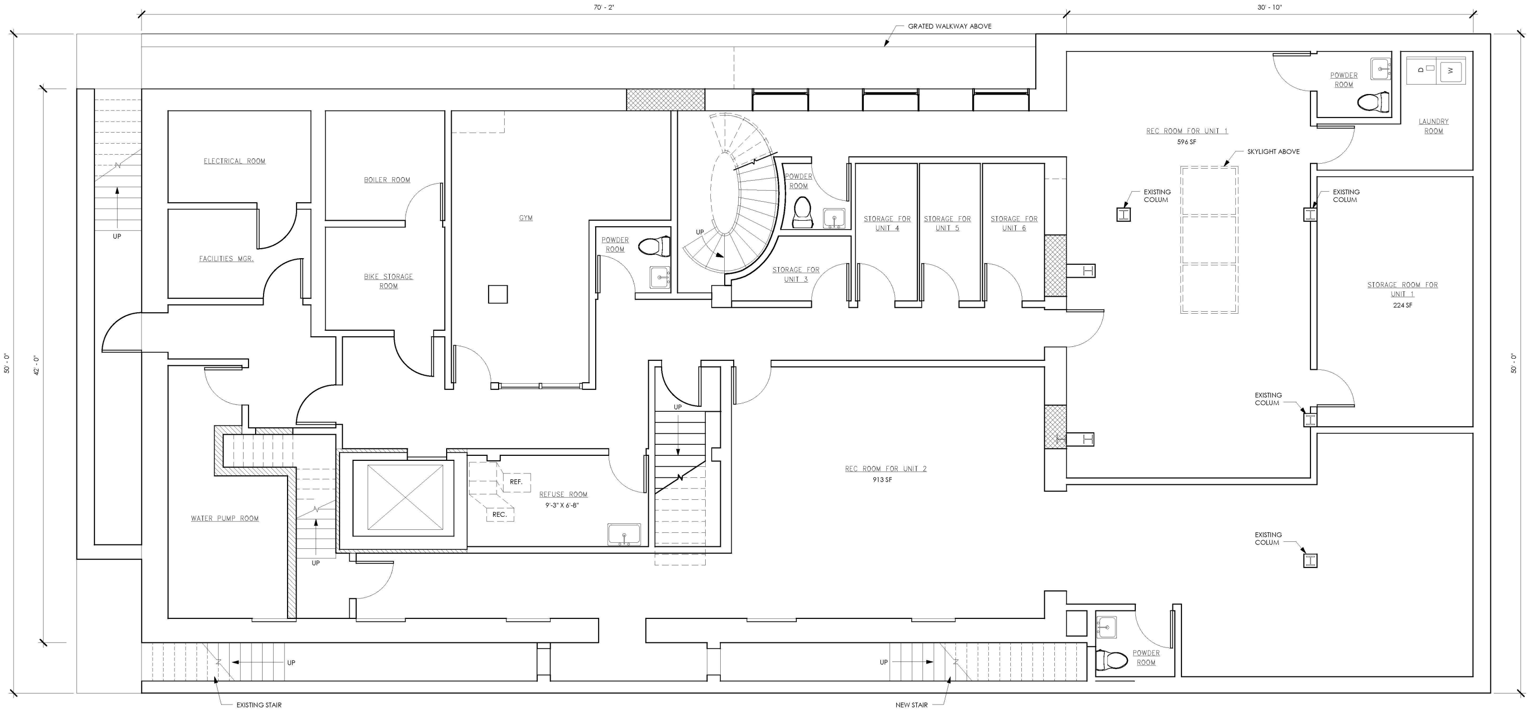
GREG WILLIAMSON JAMIE MITCHELL
T.


70' - 2"
30' - 10"
GRATED WALKWAY ABOVE
50' - 0"
42' - 0"
50' - 0"
ELECTRICAL ROOM
BOILER ROOM
GYM
FACILITIES MGR.
BIKE STORAGE ROOM
POWDER ROOM
POWDER ROOM
STORAGE FOR UNIT 3
STORAGE FOR UNIT 4
STORAGE FOR UNIT 5
STORAGE FOR UNIT 6
REC ROOM FOR UNIT 1
596 SF
SKYLIGHT ABOVE
EXISTING COLUM
EXISTING COLUM
POWDER ROOM
LAUNDRY ROOM
W
D
STORAGE ROOM FOR UNIT 1
224 SF
EXISTING COLUM
REC ROOM FOR UNIT 2
913 SF
EXISTING COLUM
REF.
REFUSE ROOM
9'-3" X 6'-8"
REC.
WATER PUMP ROOM
UP
UP
UP
UP
UP
UP
POWDER ROOM
EXISTING STAIR
NEW STAIR

① CELLAR
1/4" = 1'-0"

JEFFREY
COLE
ARCHITECTS

258 EAST 3RD STREET
GROUND FLOOR
NEW YORK NY 10009

PHONE [redacted]
FAX

No.	Revision	Date

M.E.P. Consultant

Structural Consultant

North Arrow

Project: 320 EAST 82ND STREET

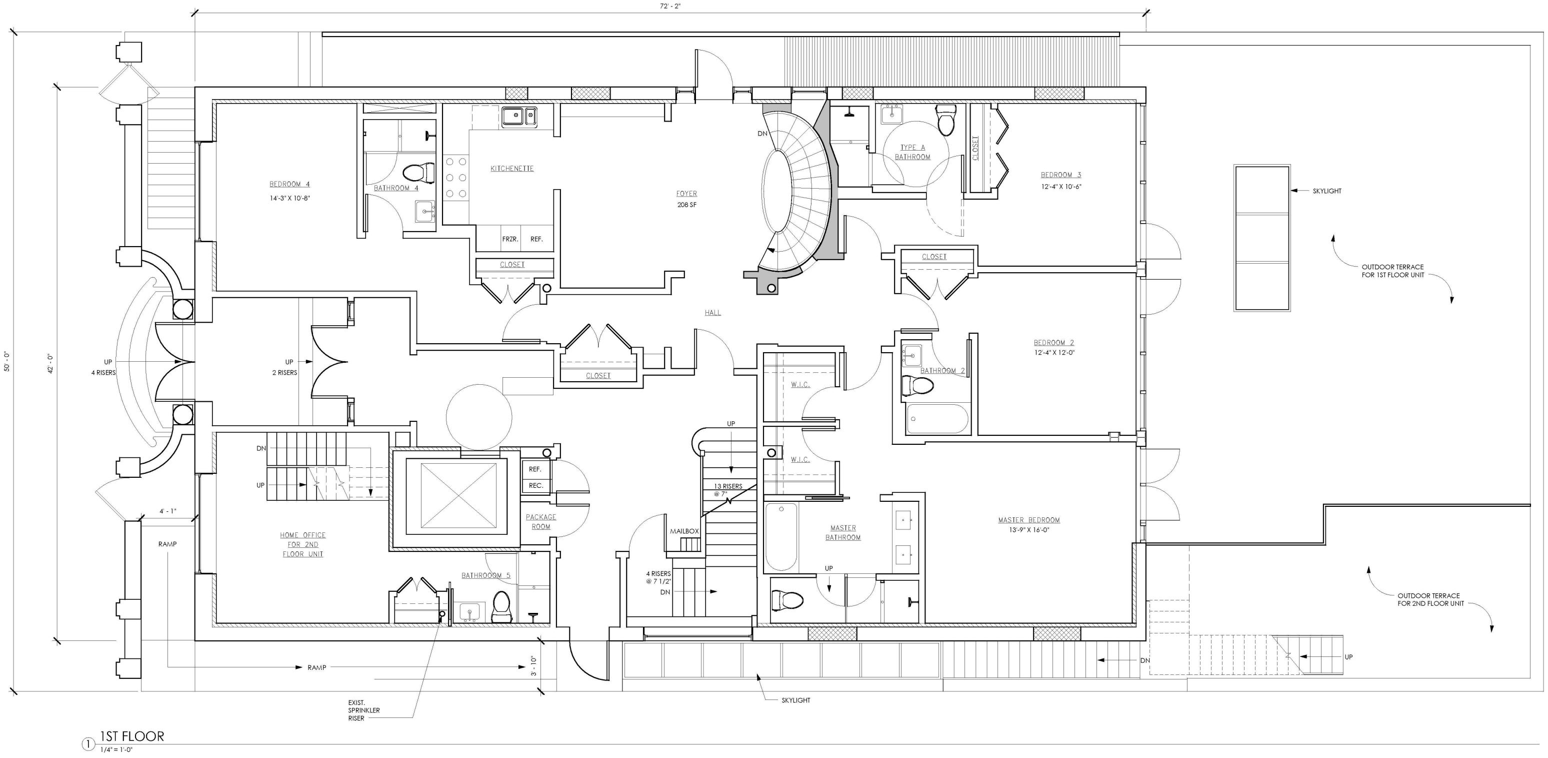
Date: 2015-11-18

Set: D.O.B SET

Sheet Title: CELLAR PLAN

Sheet Number: A-100.00

No.: 1 of 8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50' - 0"
42' - 0"
UP
4 RISERS
UP
2 RISERS
BEDROOM 4
14'-3" X 10'-8"
BATHROOM 4
KITCHENETTE
FRZR.
REF.
CLOSET
FOYER
208 SF
DN
HALL
CLOSET
TYPE A
BATHROOM
CLOSET
BEDROOM 3
12'-4" X 10'-6"
CLOSET
BEDROOM 2
12'-4" X 12'-0"
BATHROOM 2
W.I.C.
W.I.C.
SKYLIGHT
OUTDOOR TERRACE
FOR 1ST FLOOR UNIT
DN
UP
HOME OFFICE
FOR 2ND
FLOOR UNIT
REF.
REC.
PACKAGE
ROOM
UP
13 RISERS
@ 7"
MAILBOX
4 RISERS
@ 7 1/2"
DN
MASTER
BATHROOM
UP
MASTER BEDROOM
13'-9" X 16'-0"
OUTDOOR TERRACE
FOR 2ND FLOOR UNIT
BATHROOM 5
4' - 1"
RAMP
RAMP
3' - 10"
EXIST.
SPRINKLER
RISER
SKYLIGHT
DN
UP

① 1ST FLOOR
1/4" = 1'-0"

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GROUND FLOOR
NEW YORK NY 10009

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No.	Revision	Date

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Structural Consultant

North Arrow

Project: 320 EAST 82ND STREET

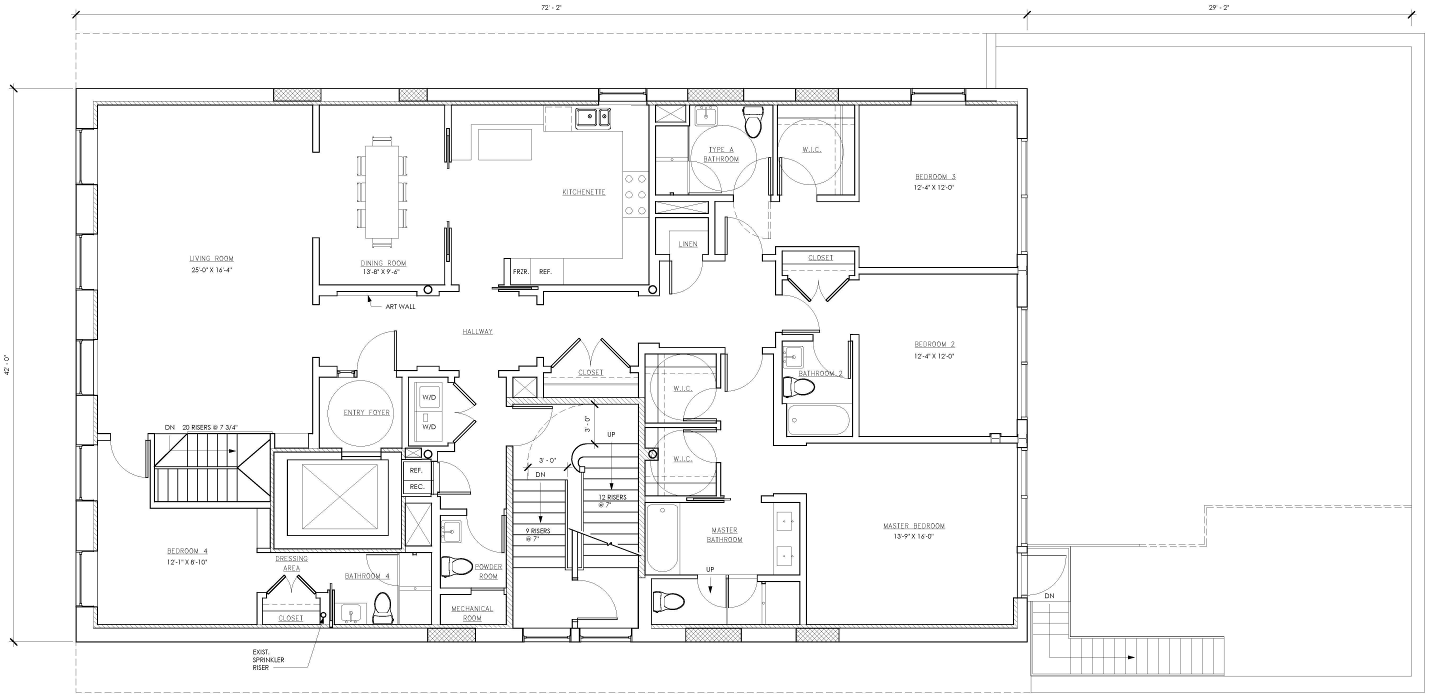
Date: 2015-11-18

Set: D.O.B SET

Sheet Title: FIRST FLOOR PLAN

Sheet Number: A-101.00

No.: 2 of 8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29' - 2"
42' - 0"
LIVING ROOM
25'-0" X 16'-4"
DINING ROOM
13'-8" X 9'-6"
ART WALL
KITCHENETTE
FRZR.
REF.
HALLWAY
ENTRY FOYER
W/D
W/D
CLOSET
DN 20 RISERS @ 7 3/4"
REF.
REC.
3' - 0"
3' - 0"
DN
UP
12 RISERS @ 7"
9 RISERS @ 7"
POWDER ROOM
MECHANICAL ROOM
BEDROOM 4
12'-1" X 8'-10"
DRESSING AREA
BATHROOM 4
CLOSET
EXIST. SPRINKLER RISER
TYPE A BATHROOM
W.I.C.
LINEN
BEDROOM 3
12'-4" X 12'-0"
CLOSET
BEDROOM 2
12'-4" X 12'-0"
BATHROOM 2
W.I.C.
W.I.C.
MASTER BATHROOM
UP
MASTER BEDROOM
13'-9" X 16'-0"
DN

① 2ND FLOOR
1/4" = 1'-0"

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ARCHITECTS

258 EAST 3RD STREET
GROUND FLOOR
NEW YORK NY 10009

PHONE [redacted]
FAX

No.	Revision	Date

M.E.P. Consultant

Structural Consultant

North Arrow

Project: 320 EAST 82ND STREET

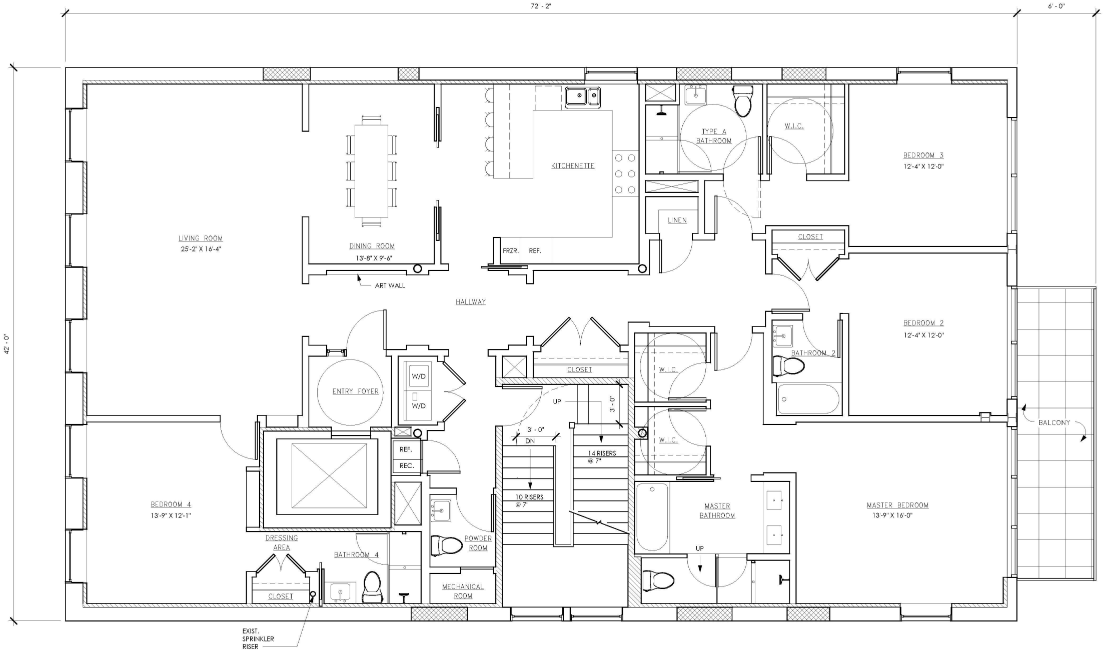
Date: 2015-11-18

Set: D.O.B SET

Sheet Title: SECOND FLOOR PLAN

Sheet Number: A-102.00

No.: 3 of 8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42' - 0"
LIVING ROOM
25'-2" X 16'-4"
DINING ROOM
13'-8" X 9'-6"
ART WALL
KITCHENETTE
FR2R.
REF.
TYPE A
BATHROOM
W.I.C.
LINEN
BEDROOM 3
12'-4" X 12'-0"
CLOSET
HALLWAY
BEDROOM 2
12'-4" X 12'-0"
BATHROOM 2
BALCONY
ENTRY FOYER
W/D
W/D
CLOSET
UP
3' - 0"
DN
3' - 0"
W.I.C.
W.I.C.
14 RISERS
@ 7"
10 RISERS
@ 7"
REF.
REC.
BEDROOM 4
13'-9" X 12'-1"
DRESSING
AREA
BATHROOM 4
POWDER
ROOM
MECHANICAL
ROOM
CLOSET
MASTER
BATHROOM
UP
MASTER BEDROOM
13'-9" X 16'-0"
EXIST.
SPRINKLER
RISER

① 3RD FLOOR
1/4" = 1'-0"

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258 EAST 3RD STREET
GROUND FLOOR
NEW YORK NY 10009

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No.	Revision	Date

M.E.P. Consultant

Structural Consultant

North Arrow

Project: 320 EAST 82ND STREET

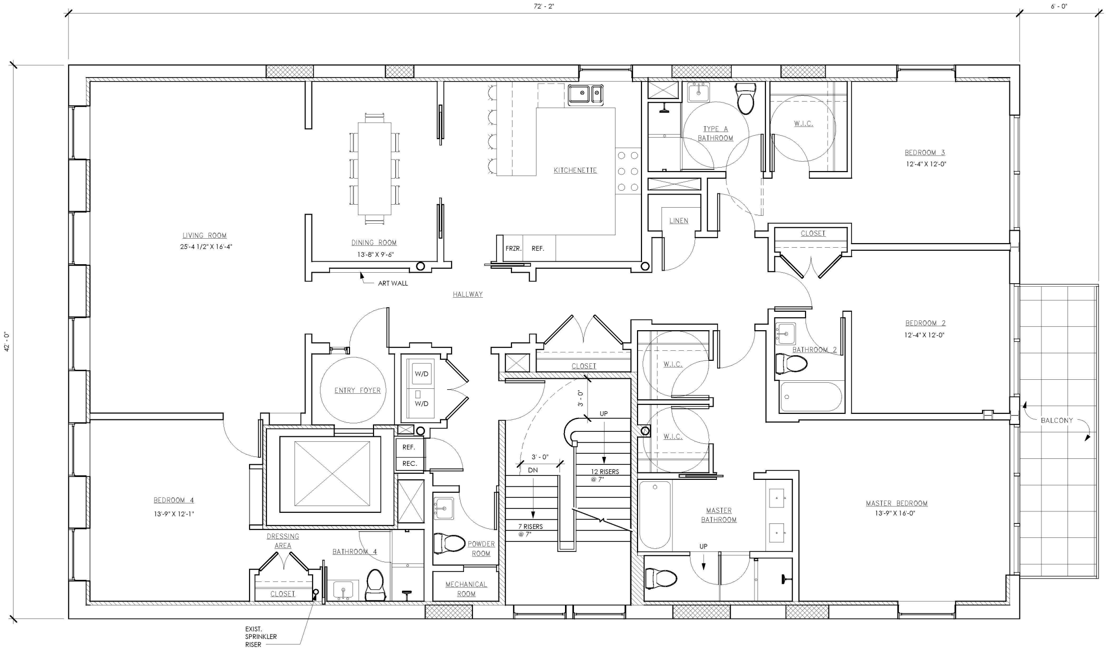
Date: 2015-11-18

Set: D.O.B SET

Sheet Title: THIRD FLOOR PLAN

Sheet Number: A-103.00

No.: 4 of 8



72' - 2"
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42' - 0"
LIVING ROOM
25'-4 1/2" X 16'-4"
DINING ROOM
13'-8" X 9'-6"
ART WALL
KITCHENETTE
FRZR.
REF.
HALLWAY
LINEN
TYPE A BATHROOM
W.I.C.
BEDROOM 3
12'-4" X 12'-0"
CLOSET
BEDROOM 2
12'-4" X 12'-0"
BATHROOM 2
BALCONY
W.I.C.
W.I.C.
MASTER BATHROOM
UP
MASTER BEDROOM
13'-9" X 16'-0"
CLOSET
3' - 0"
UP
12 RISERS @ 7"
3' - 0"
DN
7 RISERS @ 7"
ENTRY FOYER
W/D
W/D
REF.
REC.
POWDER ROOM
MECHANICAL ROOM
BEDROOM 4
13'-9" X 12'-1"
DRESSING AREA
BATHROOM 4
CLOSET
EXIST. SPRINKLER RISER

① 4TH FLOOR
1/4" = 1'-0"

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COLE
ARCHITECTS

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GROUND FLOOR
NEW YORK NY 10009

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FAX

No.	Revision	Date

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Structural Consultant

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Project: 320 EAST 82ND STREET

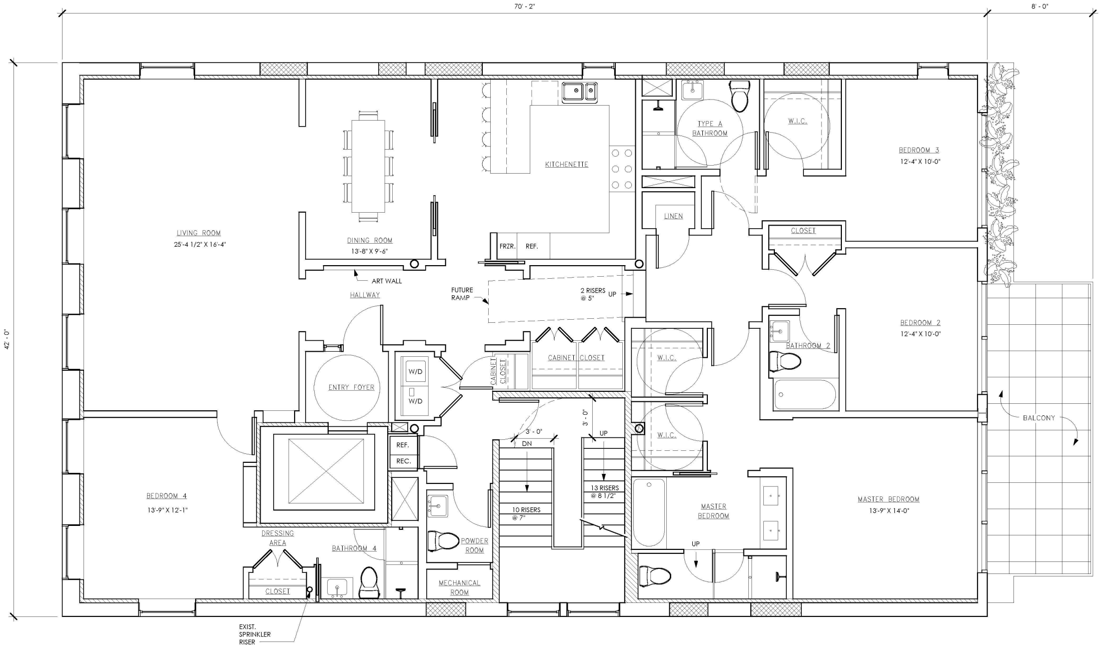
Date: 2015-11-18

Set: D.O.B SET

Sheet Title: FOURTH FLOOR PLAN

Sheet Number: A-104.00

No. 5 of 8



70' - 2"
8' - 0"
42' - 0"
LIVING ROOM
25'-4 1/2" X 16'-4"
DINING ROOM
13'-8" X 9'-6"
ART WALL
HALLWAY
KITCHENETTE
FRZR.
REF.
FUTURE RAMP
2 RISERS @ 5"
UP
ENTRY FOYER
W/D
W/D
CABINET CLOSET
CABINET CLOSET
REF.
REC.
3' - 0"
DN
UP
10 RISERS @ 7"
13 RISERS @ 8 1/2"
POWDER ROOM
MECHANICAL ROOM
BEDROOM 4
13'-9" X 12'-1"
DRESSING AREA
BATHROOM 4
CLOSET
EXIST. SPRINKLER RISER
TYPE A BATHROOM
LINEN
W.I.C.
BEDROOM 3
12'-4" X 10'-0"
CLOSET
BEDROOM 2
12'-4" X 10'-0"
BATHROOM 2
W.I.C.
W.I.C.
MASTER BEDROOM
UP
MASTER BEDROOM
13'-9" X 14'-0"
BALCONY

① 5TH FLOOR
1/4" = 1'-0"

JEFFREY
COLE
ARCHITECTS

258 EAST 3RD STREET
GROUND FLOOR
NEW YORK NY 10009

PHONE [redacted]
FAX

No.	Revision	Date

M.E.P. Consultant

Structural Consultant

North Arrow

Project: 320 EAST 82ND STREET

Date: 2015-11-18

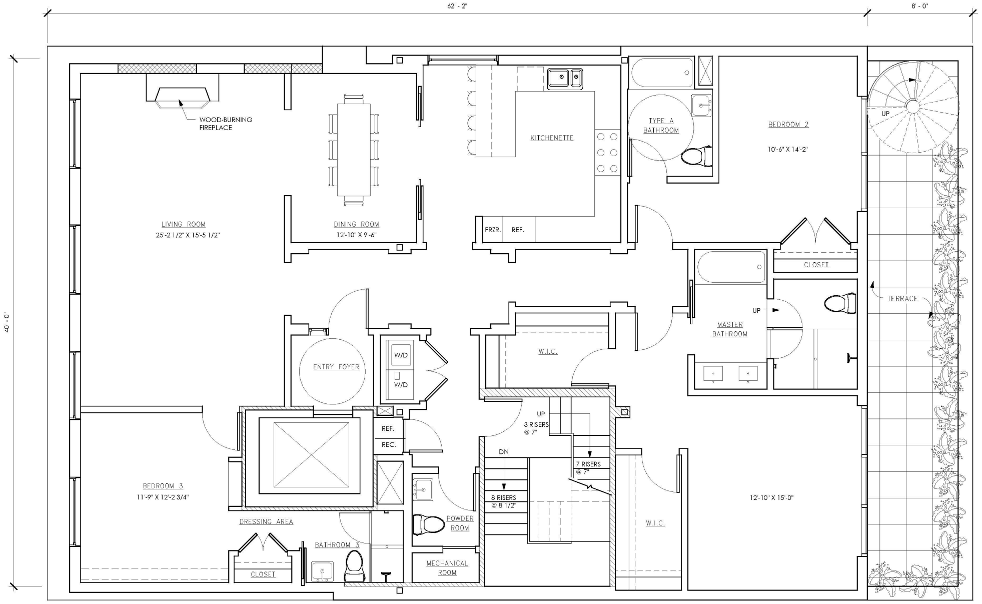
Set: D.O.B SET

Sheet Title: FIFTH FLOOR PLAN

Sheet Number: A-105.00

No.: 6 of 8

HOUSE_OVERSIGHT_022425


62' - 2"
8' - 0"
40' - 0"
WOOD-BURNING FIREPLACE
LIVING ROOM
25'-2 1/2" X 15'-5 1/2"
DINING ROOM
12'-10" X 9'-6"
KITCHENETTE
FRZR.
REF.
TYPE A BATHROOM
BEDROOM 2
10'-6" X 14'-2"
UP
CLOSET
TERRACE
UP
MASTER BATHROOM
W.I.C.
ENTRY FOYER
W/D
W/D
REF.
REC.
UP
3 RISERS @ 7"
DN
8 RISERS @ 8 1/2"
7 RISERS @ 7"
BEDROOM 3
11'-9" X 12'-2 3/4"
DRESSING AREA
CLOSET
BATHROOM 3
POWDER ROOM
MECHANICAL ROOM
W.I.C.
12'-10" X 15'-0"

① 6TH FLOOR
1/4" = 1'-0"

JEFFREY
COLE
ARCHITECTS

258 EAST 3RD STREET
GROUND FLOOR
NEW YORK NY 10009

PHONE [redacted]
FAX

No.	Revision	Date

M.E.P. Consultant

Structural Consultant

North Arrow

Project
320 EAST 82ND STREET

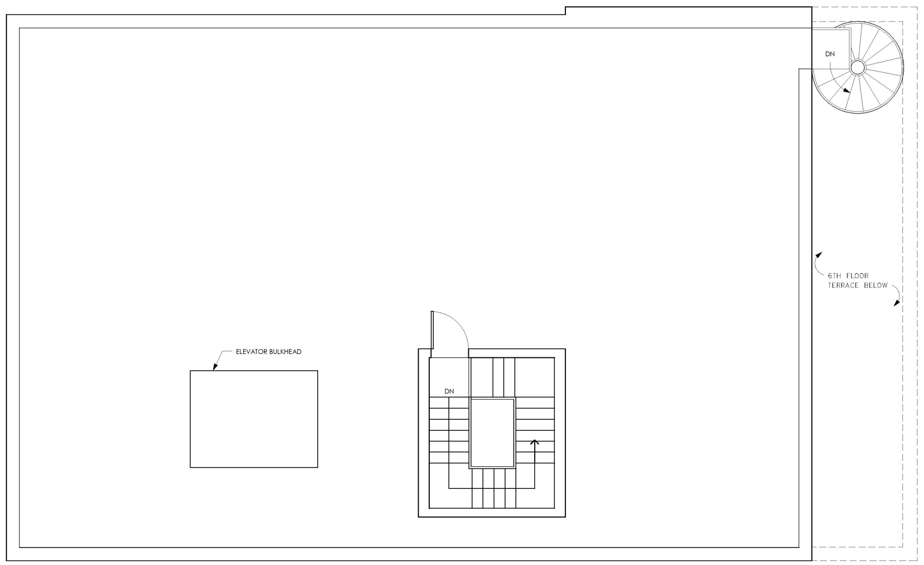
Date
2015-00-00

Set
D.O.B SET

Sheet Title
SIXTH FLOOR PLAN

Sheet Number
A-106.00

No.
7 of 8


DN
6TH FLOOR
TERRACE BELOW
ELEVATOR BULKHEAD
DN

① ROOF
1/4" = 1'-0"

JEFFREY
COLE
ARCHITECTS

258 EAST 3RD STREET
GROUND FLOOR
NEW YORK NY 10009

PHONE: 212-375-8551
FAX: 212-375-8554

No.	Revision	Date

M.E.P. Consultant

Structural Consultant

North Arrow

Project: 320 EAST 82ND STREET

Date: 2015-00-00

Set: D.O.B.

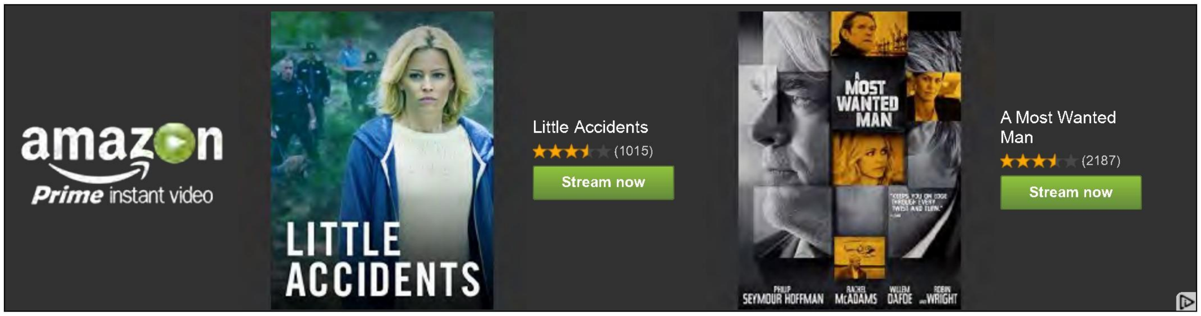
Sheet Title: ROOF PLAN

Sheet Number: A-107.00

No.: 8 of 8

EXIT

OBM
OBM
OBM


amazon Prime instant video

Little Accidents
★★★★☆ (1015)
Stream now

A Most Wanted Man
★★★★☆ (2187)
Stream now

REAL ESTATE

The Upper East Side's last affordable pocket goes luxe

By Hana R. Alberts

September 9, 2015 | 7:56pm

Take in views of Yorkville (and beyond) from a posh 20 East End Ave. terrace.

Photo: Hayes Davidson

It's a tale (practically) as old as time. When New York City real estate thrives, home builders and buyers seek to colonize neighborhoods previously deemed undesirable.

The Financial District was once the exclusive domain of nine-to-fivers; these days, every other office building is a condominium. Along the Hudson River, midtown Manhattan used to be an industrial no-man's-land of warehouses and strip clubs.

No more — residential projects abound. And now the Upper East Side neighborhood dubbed Yorkville, which stretches from about 72nd to 96th streets east of Third Avenue, is ready for its turn.

auction.com

206-208 East 35th Street

New York, NY 10016

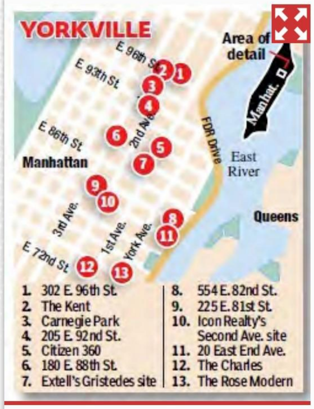
Starting Bid
$2,000,000.00

Multi-family

View Details

TRENDING NOW ON NYPOST.COM

ABC's David Muir nicknamed 'Anchor Monster'


YORKVILLE
Area of detail
Manhat.
E 96th St
E 93th St
E 86th St
E 72nd St
Manhattan
2nd Ave.
3rd Ave.
1st Ave.
York Ave.
FDR Drive
East River
Queens
1 2 3 4 5 6 7 8 9 10 11 12 13
1. 302 E. 96th St.
2. The Kent
3. Carnegie Park
4. 205 E. 92nd St.
5. Citizen 360
6. 180 E. 88th St.
7. Extell's Gristedes site
8. 554 E. 82nd St.
9. 225 E. 81st St.
10. Icon Realty's Second Ave. site
11. 20 East End Ave.
12. The Charles
13. The Rose Modern

The area, defined by its dearth of all-glass towers and plethora of tree-lined streets, has long been a favorite for blue-bloods looking to live near prep schools and the FDR Drive — for weekend getaways out East, of course.

But as both land and condo prices hit record highs, it's attracting a fresh wave of interest. More than a dozen new buildings are on the way, and with them a crop of buyers who see Yorkville as a place where apartments are a relative bargain.

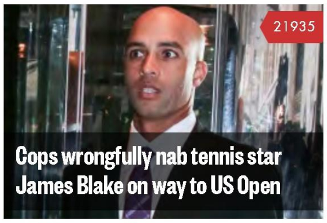
Yes, until the Second Avenue subway comes online in late 2016, public transportation is limited as you approach the East River. But the Q extension's imminent completion — coupled with a new Whole Foods and easy access to parks, museums, hospitals and other family-friendly perks — all mean people want in on a neighborhood in the throes of a transformation from nice 'n' quiet to construction-induced, decibel-busting busy.

Extell Development sure wants a piece of the action, shelling out $100 million for a Gristede's grocery store on 86th Street near First Avenue. (The property giant already owns at least four tenement buildings in the vicinity, and reports say it's cobbled together enough land to build something big.) Extell has also filed plans for two smaller projects on 92nd Street and Second Avenue, plus, it's already begun the foundation of a 30-story building at the corner of 95th and Third Avenue, just a block south of the boundary with East Harlem. Called The Kent, sales of 83 luxe two- to five-bedroom residences in a handsome brick structure will hit the market in the fourth quarter. Talk about flooding the zone!

A biker tackles Carl Schurz Park's scenic promenade along the East River.
Photo: NY Post Brian Zak

Note that The Kent, set for completion in the fall of 2017, is replacing a row of walk-up tenements that used to dominate their block. Similarly, Icon Realty spent less than $50 million for a comparable row on Second Avenue in the 80s, which it is demolishing

22055
Vegas hooker inspired former Olympian to turn tricks


21935
Cops wrongfully nab tennis star James Blake on way to US Open

VIDEO

SURREAL ESTATE
Check out the $66M 'crown jewel of Soho real estate'

REAL ESTATE NEWS
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Musician Neil Young Is Saying 'Aloha' to Compound on Hawaii's Big Island

Hot in the Hollywood Hills: Actress Ali Larter Is Selling Loft-Style Home in L.A.

Hall of Famer Tom Glavine Selling Florida Beach Home

Dean Cain's Colorado Ranch Needs a Hero to Come to the Rescue

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with the goal of putting up a chic high-rise on the site. It's markedly cheaper than Extell's deal, in part because Icon started assembling properties in 2007. (Icon is working on a second high-rise as well as a shorter rental building in the same neck of the woods.)

Just look to other data and the same trend emerges. In 2010, Yorkville's median sale price was $663,500, according to real estate listings site StreetEasy. Compare that to the first seven months of this year — it's 14 percent higher, at $757,500. But remember, the sub-market remains cheaper relative to the Upper East Side at large, which boasts a year-to-date median of $1.15 million.

HEIDELBERG
1648

Get your fill of brats and glass boots of Warsteiner at Heidelberg.

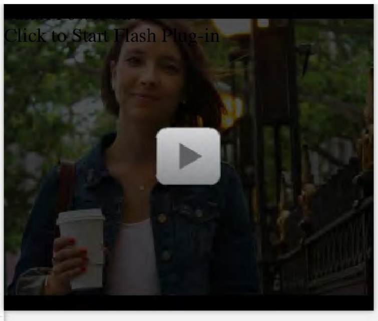
Photo: Stefano Giovannini

Despite the building boom, some low-rises remain, housing institutions, such as German butcher Schaller & Weber and beer garden Heidelberg, that are vestiges of centuries past when Yorkville was an immigrant enclave.

Schaller & Weber owner Ralph Schaller happily holding his weisswurt.

Photo: Anne Wermiel/NY Post

Let's hope they can hang on: Even more small buildings were razed to make way for star architecture firm SHoP (of Barclays Center fame) to design a tower of 83 condos with Anbau Enterprises at the corner of 89th Street and First Avenue. The building, dubbed Citizen360 because its height will afford many residents an all-around view of


Click to Start Flash Plug-in

NOW ON Page Six

Justin Timberlake shows off son, Silas

Docs don't have to admit wrongdoing in Rivers' death: judge

John Slattery drops $1,600 at NYC art fair

SEE ALL

NOW ON DECIDER

Fantasy Football Comedy 'The League' Was Mocking Bro Culture Before It Was Cool

SEE ALL

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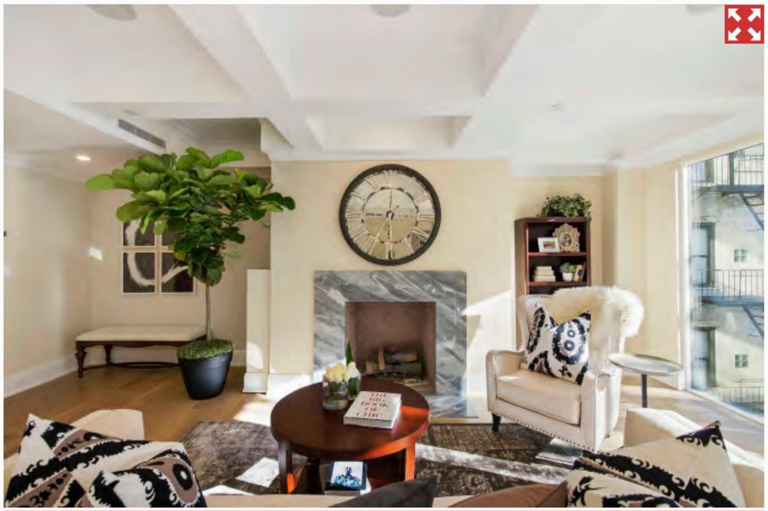
the neighborhood, will have 6,000 square feet of amenity space that ranges from music rehearsal and art rooms to a gym and children's play area. Apartments go on sale this fall, with pricing in the $1.3 million to over-$12 million ballpark.

The latest rendering for skyscraping Citizen360.
Photo: SHoP Architects

"The site was highly undervalued because it was so far east, and there were no good transportation links, and people just weren't interested or willing to go there. But we saw opportunity," says Barbara van Beuren, Anbau's managing director. "I think the absolute prices are manageable. This is not a building full of $10 million apartments." Still, it points to a future far more expensive than the current data shows.

Just one block from 113-year-old Jewish bakery Glaser's, which churns out delicious black-and-white cookies, Citizen360's shimmery facade will rise 410 feet above street level. But trumping them all will be DDG's under-construction goliath on 180 E. 88th St. At 521 feet, it will be the tallest structure on the Upper East Side north of 72nd Street. Its 48 apartments with 16-foot ceilings and custom lobby artwork launch sales this fall, with two-beds starting from $3.4 million, three-beds from $4.5 million and four-beds from $7 million.

It's not all about living among the clouds, though. Michael D'Alessio, president of Michael Paul Enterprises, oversaw the overhaul of two smallish rental buildings east of Third Avenue into boutique luxury projects. "They were prime locations for condominiums catering to families," says D'Alessio of the projects, 225 E. 81st St. (a.k.a The Justin) and 554 E. 82nd St., which have nine apartments between them. "They are three or four bedroom units, with big living and dining areas with fireplaces, and they all have outdoor space." Six have been snatched up, with asks ranging from $2.25 million for a two-bedroom to $5.99 million for a four-bedroom.



A fireplace-sporting unit inside 554 East 82nd St.
Photo: Michael Paul Enterprises

Meanwhile, another rental-to-condo conversion — Carnegie Park — attracted first-time buyer Elizabeth Dean, who realized Yorkville offered more bang for her buck after house-hunting in lower Manhattan.

"Originally, I wasn't going to go north of 86th Street. I didn't know what was above there," says Dean, 29, who works in finance, paid $1,184 per square foot for her one-bedroom and loves the restaurants, bars and grocery stores that dot the area

First-time homebuyer Elizabeth Dean in a model unit at Carnegie Park. She moves into her own one-bedroom soon.
Photo: Brian Zak

In July, StreetEasy reports Yorkville's median price per square foot was $1,098, up 5.1 percent from the year prior and a whopping 29.8 percent from the month prior. The Upper East Side as a whole, of course, boasts a higher median: $1,694 per square foot in July.

"It'll actually be a great investment," Dean says. "Downtown is extremely pricey, and I think there's a lot more upside to the Upper East Side."

Part of Carnegie Park's makeover includes a slate of plush amenities designed by classicist Robert A.M. Stern, the architect behind famously ritzy buildings like 15 Central Park West. (The pool, the roof deck and the in-house "mini-Equinox" gym lured Dean.) Available apartments range from a $955,000 one-bedroom to a $7.15 million penthouse.

You'll be able to drive up to 20 East End in style via its porte-cochère and motor court. (The latter is depicted in the rendering.)
Photo: Hayes Davidson

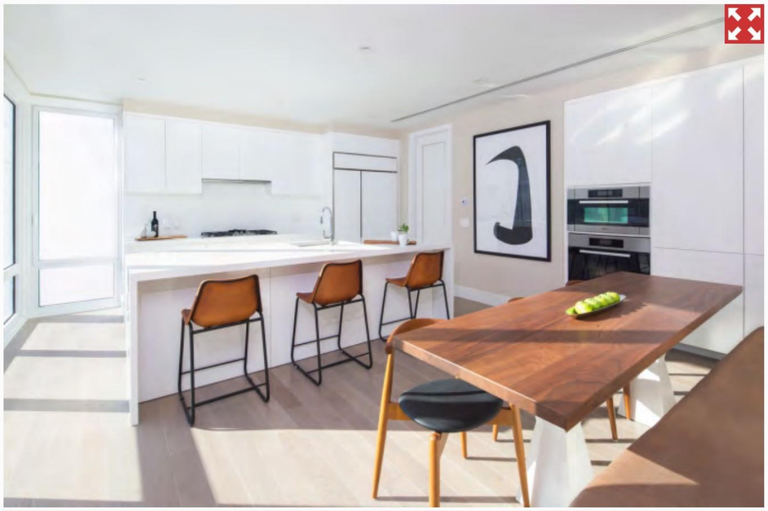
Stern is also working on a ground-up project at 20 East End Avenue that could pass as a setback-laden prewar, with old-school details like a porte-cochère, which allows residents to enter in a vehicle via an archway from the street and drive right up to the lobby door in a circular motor court. One of these hasn't been a part of any newly constructed building since the 1930s! About half of its 43 condos, spread across 18 stories, are in contract from $4.49 million to $14.25 million.

Still, three-fourths of New York City residents are renters, and the Upper East Side's new crop of construction has something for them, too. Related has topped out on a 36-story tower at 205 E. 92nd St., where a playground used to sit. The uber-fancy development will have a massive two-story Equinox gym and a private school for kids with language-based learning disabilities on its lower floors.

The under-construction rental at 205 E. 92nd St.
Photo: Brian Zak

The apartments above, set for completion and leasing in the spring of 2016, will have layouts that skew in favor of three- and four-bedrooms. "There will be thermostats programmable remotely on all the A/C units, and motorized shades in some of the units," says Bryan Cho, executive vice president at Related Companies. "From the marble bathrooms to the highly designed public spaces and the amenities, it's what's usually in condominiums."

On the rental market sooner is The Rose Modern, a 20-story, 82-unit tower currently finishing up construction on York Avenue. The leasing office will open the first week of October offering "competitive" rents for a luxury building, according to Bond New York's Douglas Wagner, with move-ins slated for November and December.



An art-infused kitchen inside a condo at The Charles.
Photo: Evan Joseph Images

Want to buy now, and move in immediately? The building most ahead of the curve is The Charles. Previously stalled after 2008's downturn, the 32-story condo at 1355 First Ave. got redesigned to emphasize large full-floor apartments before breaking ground in 2012. And it's paid off. There are four units left out of 27 total, which started at $5.97 million. A recent sale of the top six floors to two unidentified relatives for a total of $59 million made headlines. That price? On *First Avenue*?

"The preconceived idea of what was considered prime and where you would build luxury has completely changed," says Jason Karadus of Town, who is director of sales for the Charles along with Ginger Brokaw. "A lot of people in the industry smirked at the pricing — about $2,500 per square foot … Now it's not so risky, which is why you're seeing companies like Extell building up what's left to be developed up there."

First look! Once a three-story garage, 302 E. 96th St. will become a 21-story luxury condo.
Photo: Handout

Every developable parcel seems to be getting snatched up. Just take a three-story garage on 302 East 96th Street, which developer Wonder Works bought in March for $24 million. On the northernmost border with Harlem, the developer plans to put up a 21-story, 48-unit "affordable luxury" condo building — basically right on the approach to the FDR. (Don't worry, the facade will have extra soundproofing.)

"The Second Avenue subway station for 96th street, which will be one of the first ones opened, is just 200 feet away," says Eric Brody, Wonder Works' managing partner, who adds that brokers are recommending asking prices of $1,500 to $2,300 per square foot when units go on sale next year. "The buyer is anyone who can't afford to be in all these downtown neighborhoods, but still wants to live in the city and have incredibly close access to a train."

Public transit of the future is why Andrew Ellis bought a fixer-upper on 95th Street and Second Avenue in 2013. The 31-year-old consultant paid a mere $430 per square foot for a one-bedroom garden-level duplex. Then came a massive year-long renovation that updated the windows and kitchen appliances. He also completely redid the backyard, adding a rear deck and koi pond. In Yorkville, Ellis discovered a "neighborhood feel" that was a far cry from the raucous scrum of Murray Hill, where he had been renting.

"I had sort of grown out of that," says Ellis, who is no longer alone in his move uptown. "My high school friends and some college friends are migrating to the Upper East Side. One is two doors down, literally, and two others are a few blocks away. Having that subway there eventually is really what did it for me. This place can only go up."

Andrew Ellis stands in his Yorkville backyard, which he completely redid, adding a deck (so that the outdoor space was accessible from the upstairs living room of the duplex) and a koi pond.
Photo: Brian Zak

anbau

360 East 89th Street
New York, NY

DESCRIPTION

360 East 89th Street is a new construction luxury condominium building located in Manhattan's Upper East Side between Carl Schurz Park on the East River and the new Second Avenue subway. The building will offer a full range of residence types, all with floor to ceiling windows, innovative kitchens, and high ceilings. Over 7,500 SF of amenity space will be available for the residents' use and an on-site, fully automated parking facility is also planned.

COMPLETION DATE

2017

SIZE

209,000 SF, 34 stories

UNIT MIX

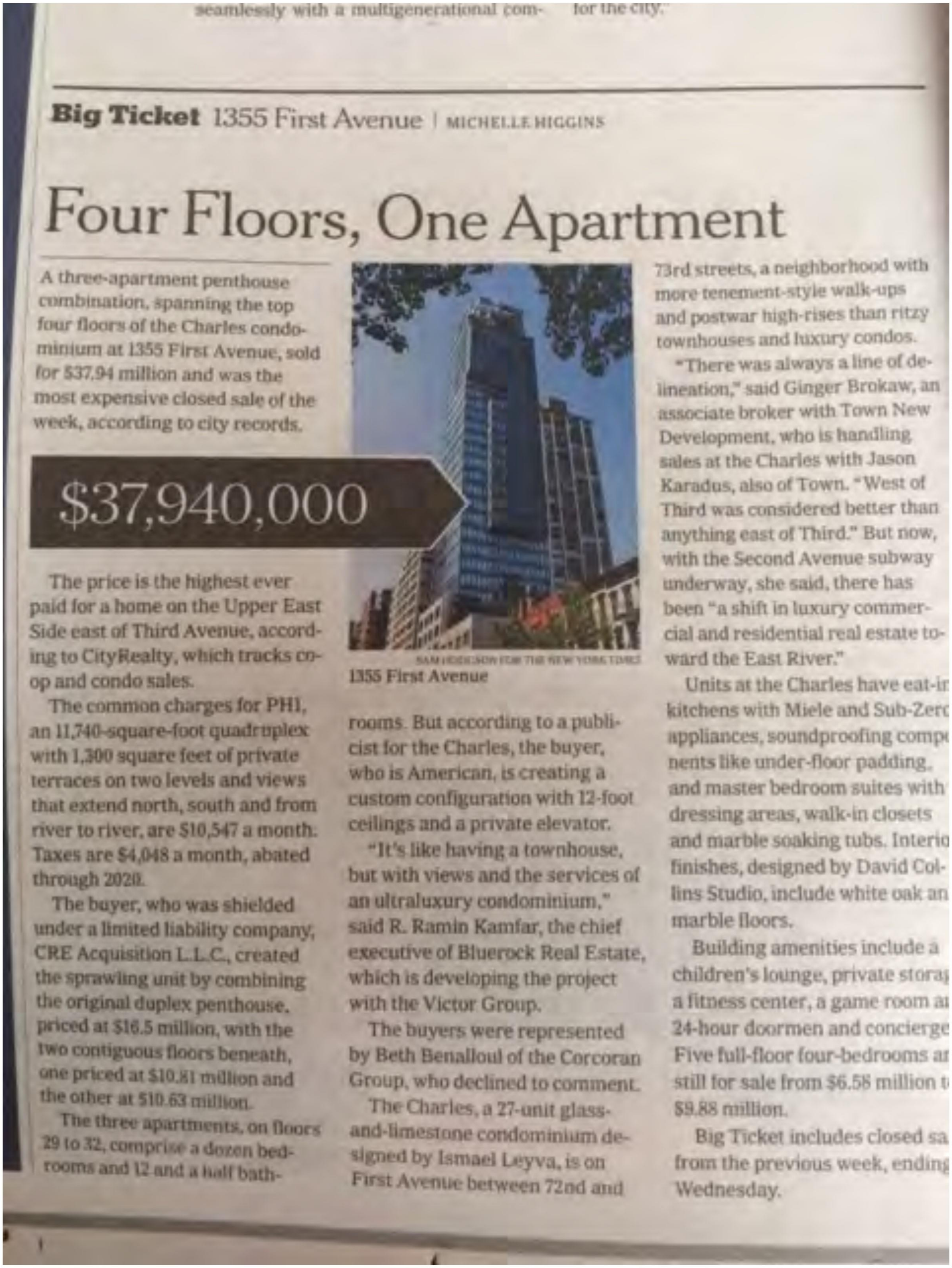
83 one, two, three, four bedroom and penthouse units

AMENITIES

24 hour doorman, gym and fitness studio, children's playroom, catering kitchen, tenant and bike storage, common laundry & automated parking facility

TEAM

Architect	SHoP Architects
Interior Designer	Clodagh Design
Engineers	Cosentini Associates Thornton Tomasetti
Marketing & Sales	The Corcoran Group
Creative Agency	IF Studio
Contractor	Ryder Construction, Inc.



seamlessly with a multigenerational com- for the city."

Big Ticket 1355 First Avenue | MICHELLE HIGGINS

Four Floors, One Apartment

A three-apartment penthouse combination, spanning the top four floors of the Charles condominium at 1355 First Avenue, sold for $37.94 million and was the most expensive closed sale of the week, according to city records.

$37,940,000

SAM HODGSON FOR THE NEW YORK TIMES

1355 First Avenue

The price is the highest ever paid for a home on the Upper East Side east of Third Avenue, according to CityRealty, which tracks co-op and condo sales.

The common charges for PH1, an 11,740-square-foot quadruplex with 1,300 square feet of private terraces on two levels and views that extend north, south and from river to river, are $10,547 a month. Taxes are $4,048 a month, abated through 2020.

The buyer, who was shielded under a limited liability company, CRE Acquisition L.L.C., created the sprawling unit by combining the original duplex penthouse, priced at $16.5 million, with the two contiguous floors beneath, one priced at $10.81 million and the other at $10.63 million.

The three apartments, on floors 29 to 32, comprise a dozen bedrooms and 12 and a half bathrooms. But according to a publicist for the Charles, the buyer, who is American, is creating a custom configuration with 12-foot ceilings and a private elevator.

"It's like having a townhouse, but with views and the services of an ultraluxury condominium," said R. Ramin Kamfar, the chief executive of Bluerock Real Estate, which is developing the project with the Victor Group.

The buyers were represented by Beth Benalloul of the Corcoran Group, who declined to comment.

The Charles, a 27-unit glass-and-limestone condominium designed by Ismael Leyva, is on First Avenue between 72nd and 73rd streets, a neighborhood with more tenement-style walk-ups and postwar high-rises than ritzy townhouses and luxury condos.

"There was always a line of delineation," said Ginger Brokaw, an associate broker with Town New Development, who is handling sales at the Charles with Jason Karadus, also of Town. "West of Third was considered better than anything east of Third." But now, with the Second Avenue subway underway, she said, there has been "a shift in luxury commercial and residential real estate toward the East River."

Units at the Charles have eat-i kitchens with Miele and Sub-Zer appliances, soundproofing comp nents like under-floor padding, and master bedroom suites with dressing areas, walk-in closets and marble soaking tubs. Interio finishes, designed by David Collins Studio, include white oak an marble floors.

Building amenities include a children's lounge, private stora a fitness center, a game room a 24-hour doormen and concierge Five full-floor four-bedrooms a still for sale from $6.58 million t $9.88 million.

Big Ticket includes closed sa from the previous week, endin Wednesday.

From: Nicholas Ribis [[redacted]]
Sent: 1/21/2016 2:28:39 PM
To: 'jeffrey E.' [jeevacation@gmail.com]

Importance: High

Jeffrey – I told u weeks ago that Davis would issue a report critical of Leon and board read article in Post business page re Davis Report and Caesars – and DJT will be President -- Nick

Nicholas Ribis
President/CEO
NLR Ventures
60 Morris Turnpike 2FL
Summit, NJ 07901
O: [redacted]
F: [redacted]

****
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If you have received this e-mail in error, please notify us immediately by returning it to the sender and deleting the copy from your system.

Thank you.
****

From: Nicholas Ribis [redacted]
Sent: 4/25/2016 2:04:49 PM
To: 'jeffrey E.' [jeevacation@gmail.com]

Importance: High

Remind ur friend that I designed the DJT business comeback and now he may be the President

Nicholas Ribis
President/CEO
NLR Ventures
60 Morris Turnpike 2FL
Summit, NJ 07901
O: [redacted]
F: [redacted]

****
CONFIDENTIALITY NOTICE: This message is being sent by NLR Ventures. This e-mail and any attachments are confidential and proprietary. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited.

If you have received this e-mail in error, please notify us immediately by returning it to the sender and deleting the copy from your system.

Thank you.
****

Inference: International Review of Science

Feedback & Comments

November 2018

David Adger

Professor of Linguistics at Queen Mary University of London.

"Thanks for the hardcopy of the last issue. It was really interesting,"

Egil Asprem

Associate Professor in the History of Religions at Stockholm University.

"It is exciting to see text moving toward production - and quite an impressive job by the editors in cutting the text so much while retaining the essentials in an elegant way!"

"It's been a pleasure working with you!"

Pamela Asquith

Professor of Anthropology, University of Alberta.

"The journal looks very interesting indeed and I feel it is an honor to be invited to contribute."

Jeremy Avigad

Professor of Philosophy at Carnegie Mellon University.

"I have been reading and enjoying a number of articles in Inference. *I am impressed; it is a very nice publication."*

Jeremy Bersntein

Professor emeritus of physics at the Stevens Institute of Technology.

"So many thanks. This worked out very well. The editing was excellent although the caricature of me looked more like Donald Trump than me! I hope to work with you in the future"

"I read the issue with great interest and was pleased to see my quantum there."

"I thank the editors for their good editing. "

Inference: International Review of Science

Feedback & Comments

Robert Berwick

Professor of Computational Linguistics and Computer Science and Engineering at MIT.

"I am truly delighted that you and others have started publishing such a journal as Inference, which touches on so many of my own concerns and interests - I have been meaning for years to write articles on evolutionary theory (some like the fine ones you've already published); on big data and its discontents (I have one on the deep troubles with deep learning); on the sloppy connectome neuroscience (which you've covered); and so on - in fact, many of the topics on your "hit list". Your abbreviations alone are priceless."

Simon Blackburn

Professor of Philosophy at the University of Cambridge.

"Many thanks for the new issue link and for the prompt payment. Unusual in the publishing world."

"Fascinating. I had not realised how high you aimed."

Ralph Blumenthal

Former reporter for The New York Times.

"Thanks, looks impressive. Unable to take on anything else now but will keep in mind."

Cedric Boeckx

Research Professor at the Catalan Institute for Advanced Studies.

"Thanks for your invitation to contribute to Inference*, your patience & advice. I think it came out nicely."*

Alexander Bogomolny

Cut The Knot blog.

"I loved the journal - very broadly informative. I plan to making references to a few articles."

Inference: International Review of Science

Feedback & Comments

William Briggs

Independent writer, statistician, scientist and consultant.

"It would be my honor to accept your invitation. I know your journal. I especially like George Ellis's latest essay."

John Brooke

Professor of History and Anthropology and Director of the Center for Historical Research at Ohio State.

"Many thanks – I have been spending the last few minutes reading these letters, you have put together an excellent body of commentary."

Umberto Cannella

Physicist and currently educational specialist for the Swiss Space Center at the Polytechnic Federal Institute in Lausanne.

"I very much enjoyed the final form of the essay: the editing has really improved its completeness and readibility. The caricature was a nice plus of the collaboration: it was a pleasure to work with Inference *and I do hope to contribute again in the future."*

James Carny

Brunel University London.

"I read Inference *with great interest, and consider it to be one of the most useful publications for intelligent and challenging writing across all the disciplines."*

Gregory Chaitin

Professor at the Federal University of Rio de Janeiro.

"I enjoyed very much the pieces by David Berlinski and Kusala Rajendran. Looking forward to reading Are We Smart Enough to Know How Smart Animals Are?, a terrific title."

Swapan Chattopadhyay

Presidential Chair for Research, Scholarship and Artistry, Professor and Director of Accelerator Research at Northern Illinois University.

"Many thanks for seeking me out and your message. I am very impressed by the quality of individuals who have contributed to your on-line journal and its peer-less and informal character, which is conducive to creative and innovative expression."

Noam Chomsky

American linguist, philosopher, cognitive scientist.

"Looks like a fascinating issue, with a lot of material of special interest for me."

"Many thanks for sending. Much enlightening reading ahead."

"Many thanks for sending. Glad to see it. And the whole issue too, as always."

Marcin Chrząszcz

Physicist at the University of Zurich.

"Thank you for the new issue of Inference. *I see my good friend Joaquim Matias has written an article about my measurement :) Looking forward reading more in details!"*

Arthur Cody

American philosopher emeritus at San José State College in California.

"I have read several of the articles in the current Inference. I liked them all. You all, the editors, have worked very hard, I see, at getting the papers in a readable but not a condescending shape."

John Colarusso

Comparative linguist at McMaster University.

"It is an extraordinary journal. Fascinating!"

"I am so pleased to have had a chance to contribute to it."

Inference: International Review of Science

Feedback & Comments

Simon Conway Morris

English palaeontologist, evolutionary biologist, and astrobiologist.

"Thank you for your e-mail as well as sending me earlier a recent copy of Inference. *In principle I'd be happy to contribute a piece."*

Jay Cordes

Data scientist at Berkeley.

"*In addition to Data Science, I'm also very interested in Quantum Mechanics, so I may have to subscribe to your journal; it looks fantastic!"*

Emanuel Derman

South African-born academic, businessman and writer.

"I've been enjoying very much reading Inference *while I've been writing. It's an amazing endeavor and I wonder how it got started."*

Niall Ferguson

senior fellow of the Hoover Institution, Stanford, and the Center for European Studies, Harvard.

"Your new journal sounds excellent."

Robert Freidin

Professor emeritus in the Council of the Humanities in the Philosophy Department at Princeton University.

"Thanks again for the opportunity to write about linguistics for a general audience. It was an interesting and educational experience. I wish you great success with your journal."

Inference: International Review of Science

Feedback & Comments

Kieran Fox

Postdoc in Neurology and Neurological Sciences at Stanford.

"I had not heard of Inference *before but I looked into it and it looks like you have created a really classy and thoughtful venue. I was very impressed with the quality of the work and the list of illustrious contributors. I'm honored to be invited to contribute."*

Sheldon Glashow

Nobel Prize, Metcalf Professor of Mathematics and Physics at Boston University and Higgins Professor of Physics, emeritus, at Harvard University.

"I am honored to become an author for Inference.*"*

"Indeed I enjoyed the latest issue, and not just my own contribution. The editing process was most professional."

Sharon Glotzer

Distinguished University Professor of Engineering and the Stuart W. Churchill Collegiate.

"I am impressed with your journal having now read several articles."

Alex Golub

Associate professor at the Department of anthropology, University of Hawaï.

"I was not aware of your journal before receiving your message, and having read some of the reviews on your site I am impressed with the quality of both the authors and the content."

Monica Green

American historian and Professor of History at Arizona State University.

"I saw it last night. Thank you so much. It's already getting a lot of attention on Twitter."

Inference: International Review of Science

Feedback & Comments

John Hawks

Associate professor of anthropology at the University of Wisconsin–Madison.

"Thanks for getting in touch with me! I did see Tattersall's essay and really like the way that you handled that. It is a very nice format, and gives a great opportunity for a deeper discussion of scientific issues like this one."

"I received a copy of Inference*. I have been impressed by the work that I have seen published by other researchers in* Inference*."*

William von Hippel

Professor and former head of the School of Psychology at the University of Queensland.

"Thanks, looks very interesting!"

Roald Hoffmann

Nobel Prize in Chemistry.

"*I really enjoyed your article in* Inference*, because you really tried to convey to a general educated audience what a synthesis is like. It is not easy, and I have tried.*"

Gerald Holton

American physicist, historian of science, and educator.

"Thank you for sending me Mr. Glashow's remarkable and engaging essay."

Jim Hudspeth

Laboratory of Sensory Neuroscience at The Rockefeller University.

"Wow! I am very impressed by both the range and the quality of the articles and responses that have appeared to date, several of which I have just read."

Tasneem Husain

Theoretical physicist, writer and educator, based in Cambridge.

"I have not yet had the opportunity of reading all the articles, but gauging from what I have read, this latest issue seems fascinating."

José M Igoa

Department of Basic Psychology Department at the University of Madrid.

"Thank you very much for the information about your journal and the link to David Lobina and Mark Benchley's review of Tom Wolfe's book. I have taken a look at the title of the articles you have published so far and they look pretty interesting indeed. I will voice the news about your publication to my colleagues."

Eva Jablonka

Israeli theorist and geneticist.

"Thank you very much for sending us the online ninth issue (very interesting and thought provoking)."

Andrew Jordan

Professor of physics at the University of Rochester.

"I have gone through the edited version of the book review. There were a lot of changes made, but I think you managed to keep most of my ideas and condense it in the editing process. Please pass along my thanks to David and the other editors for the editing/co-writing."

Alexander Kharazishvili

Chief Researcher in the Department of Mathematical Analysis at the A. Razmadze Mathematical Institute.

"Thank you very much for information and good news! Definitely, I will be reading this issue of Inference *with my great interest and I am sure I will enjoy it. Especially, I am proud to be among so eminent authors."*

Inference: International Review of Science

Feedback & Comments

"Many thanks for information concerning the new issue of Inference. *I will be reading the material presented in it with my great interest, especially because of very eminent persons among the authors of articles of this issue."*

William Kininmonth

Australian retired meteorologist.

"Thank you for advising of the availability of the fifth issue of Inference. *It has splendid articles and may the publication prosper."*

Matthew Kleban

Associate Professor of Physics and Director of the Center for Cosmology and Particle Physics at New York University.

"It seems to me that Ellis' criticism of my response is rather dishonest. He quotes part of a paragraph, and then attacks it ("Wrong…") on precisely the grounds that I addressed in the sentences following the part he quoted, which he ignores. Nevertheless, I'm glad to see this debate playing out in a serious publication (rather than on blogs etc)."

Lawrence Krauss

Foundation Professor of the School of Earth and Space Exploration at Arizona State University and director of its Origins Project.

" It is a remarkable collection. I am honored to be listed as a part of it."

Martin Krieger

Professor of planning at the Sol Price School of Public Policy at the University of Southern California.

"Inference *continues to have terrific stuff. Please tell the editors that what is being published in* Inference *is much better than what appears elsewhere in its areas of concern. Concrete, specific, interesting."*

Inference: International Review of Science

Feedback & Comments

Pieter Lemmens

Professor of philosophy and ethics at the Radboud University in Nijmegen, the Netherlands.

"I wanted to thank you both once again for all your excellent support and for the outstanding way in which my review has been edited and published on the beautiful Inference *website, including the caricature, which I really liked. I feel truly honored. And many thanks for the generous remuneration as well."*

David LePoire

Environmental analyst at the US national laboratory.

"Thank you very much. Your efforts in revising and editing this paper have improved it greatly. Although I like the figure, I realize that the table is more readable."

John Leslie

University Professor Emeritus, Fellow of the Royal Society of Canada.

"I am grateful for the issues of Inference that you have sent to me, all of them very interesting.

I admired its quality."

Audrey Li

Professor of East Asian Languages and Cultures and Linguistics.

"*Many thanks for bringing my attention to this excellent article. The writing is accessible and captivating. Hope you don't mind me helping to spread words about this article."*

Stuart Lindsay

Director of the Center for Single Molecule Biophysics in the Biodesign Institute, Arizona State University.

"The many requests from "vanity" publishers swamp out the genuine article. Your publication is very interesting. I enjoyed the articles in the link, even Jim Tour's which I think is based on silly science."

Inference: International Review of Science

Feedback & Comments

Wolf-Ekkehard Lönnig

Former research scientist at the Max Planck Institute for Plant Breeding Research in Cologne, Germany.

"Thank you very much for your informative mail and the print version of Inference*. I liked it and I have appreciated the quality of its selection of the range of substantial topics as well as its eminent contributors."*

Robert Losee

Professor at the UNC School of Information and Library Science

"Looking through your web site, I am impressed by Inference*!"*

Jean-Pierre Luminet

Director of Research at the CNRS Astrophysics Laboratory in Marseille and the Paris Observatory.

"I am quite amazed by the extraordinary improvement of our draft due to your strong implication in Quietanus' history. I really enjoy the new version as it is, and I thank you to have taken so quickly and efficiently the decision to publish it."

Jayadev Misra

Indian computer scientist, currently the Schlumberger Centennial Chair Emeritus and Distinguished Teaching Professor Emeritus at University of Texas at Austin.

"I looked over some of the back issues of your journal, and I am impressed by the quality of the publications (and the authors). It will be a great honor to write an article, but also extremely time-consuming."

Alexander More

Research Associate in Harvard department of History, Initiative for the Science of the Human Past .

"I've read several great reviews on Inference *recently."*

Inference: International Review of Science

Feedback & Comments

John Norton

Distinguished Professor at Department of History and Philosophy of Science, University of Pittsburgh.

"I've been reading the articles. Congratulations—a great issue!"

"An aside, if I may: I happen to writing some teaching materials on time travel universes and quantum mechanics for my online teaching book. So it was a welcome surprise to find articles on the very topic in Vol 3 and Vol 4 of your journal. Count me as a happy reader!"

Christof Paulus

Visiting lecturer in the Department of History at the Ludwig Maximilian University of Munich.

"It really has become a very interesting new issue of Inference. International Review of Science*.* *I'm happy to be part of it and I enjoy it very much."*

Philip Pilkington

Research analyst working in investment management and focusing on macroeconomic research.

"I read some of the articles online. Very good."

CP Rajendran

Indian geologist.

"I just opened the link and saw a wonderful list of articles. Looking forward to reading them. Kusala's article is highly liked by some readers in India."

Kusala Rajendran

Professor at the Indian Institute of Science's Centre for Earth Sciences in Bangalore.

"The piece shared with friends revieved very good comments. Lot of people would access the site now. Thanks for inviting me to do this and thanks for the great job."

Inference: International Review of Science

Feedback & Comments

Joris Roosen

PhD student at Utrecht University and is affiliated to the Research Institute for History and Art History.

"It was a pleasure to contribute to your journal."

Merrilee Salmon

Professor Emerita at the University of Pittsburgh in the Department of History and Philosophy of Science.

"I have read with great pleasure about half of the issue now, and I am delighted that my piece appears in such distinguished company."

Subir Sarkar

Head of the Particule Theory Group in Oxford's Department of Physics.

"I am still very interested in writing for Inference. *I do think it is unique - both in its style and coverage, and in its readership who I imagine are intellectuals in the broadest sense. It should be a privilege to write for it"*

"I am very impressed by the depth and quality of the contributions. There are critical literary journals (e.g. the London Review of Books) but I have not come across anything like this in the sciences."

Eric Scerri

Historian and philosopher of chemistry in the Department of Chemistry & Biochemistry at UCLA.

"What an excellent journal!"

Pierre Schapira

Professor Emeritus at University Pierre et Marie Curie, Paris 6.

"This issue seems extremely rich and interesting."

Inference: International Review of Science

Feedback & Comments

George Scialabba

Contributing editor of the online art and literary magazine The Baffler.

"I look forward to reading it, as usual."

James Sharpe

Professor of Early Modern History.

"Again, my thanks for having been sent this, and I would like to extend my best wishes for the future of Inference.*"*

Lawrence R. Smith

Entrepreneur, former academic, and a specialist in the Inuktitut (Eskimo) language for computational linguistics research.

"I appreciate your editorial work and have admired Inference *since its inception."*

Wolfgang Streeck

Director Emeritus and Professor at the Max Planck Institute for the Study of Societies in Cologne.

"Looks very good."

Ian Tattersall

Paleoanthropologist, American Museum of Natural History in New York City.

"Please thank your staff for a very nice production job. It has been a pleasure working with you, and I would be delighted to repeat the experience some time. Thanks again for showcasing my work. "

Mariam Thalos

Professor of Philosophy at the University of Utah.

"I am very gratified by your invitation, which I will be very happy to accept (and propose a topic) if you would still like me to do so after reading this email."

Inference: International Review of Science

Feedback & Comments

Vangelis Tourloukis

Post-doctoral researcher in the Paleoanthropology Department of the Institute for Archaeological Sciences at the Eberhard Karls University of Tübingen.

"I enjoy and respect Inference*, and I really appreciate your invitation."*

Luca Turin

Biophysicist with an interest in biological electronics.

"A science article I wrote for Inference is now online. I am honored to find myself in the company of people whose writing I admire, like the great critic George Scialabba and the astronomer and cosmologist Jean Pierre Luminet. And I even like the caricature."

"The article looks great, many thanks. I would be happy to write some more for your excellent magazine."

Reidun Twarock

German-born mathematical biologist at the University of York.

"Many thanks for the link - I have read the essays with great pleasure."

Jaya Sivaswami Tyagi

Professor and Head, Department of Biotechnology, All India Institute of Medical Sciences.

"I have indeed received the print version of Inference in very good condition considering its size and was impressed by the product. I have glanced through it and will definitely read the articles and give you my feedback in due course of time."

Richard Wagner

Holbert L. Harris Professor of Economics at George Mason University.

"Thanks for sending along the new issue of Inference*. Your journal has established a wonderful editorial policy of presenting deeply thoughtful examinations of a broad range of scholarly topics. Not only do I plan to keep up with Inference going forward, but also I will convey my enthusiasm for your journal to those colleagues of mine who I think will be interested."*

Inference: International Review of Science

Feedback & Comments

Swede White

Wolfram Research.

"The journal's content is quite interesting, and this sounds like a wonderful opportunity."

William A. Wilson

Entrepreneur and artificial intelligence researcher.

"I hadn't previously heard of your magazine, but when I clicked over to your website my eye was immediately caught by Gregory Chaitin's article, as he is one of my favorite mathematicians. I also read with great pleasure "Categories: From Zero to Infinity" by Pierre Schapira, which did an excellent job of communicating a highly technical subject. I'm now looking forward to perusing the rest of the site when I have time!"

Natalie Wolchover

Award-winning science writer, she has covered the physics beat on staff at Quanta Magazine since the magazine's launch in 2013.

"Thank you very much for the invitation to write for your excellent journal. I have read many wonderful essays in Inference*, and would be honored to contribute, if only I had the time and energy to do so.*

I hope we can stay in touch and perhaps revisit the possibility of my writing for you at a future time. I especially appreciate how long and technical, but still crystal clear, your articles tend to be, permitting great depth and thoroughness. Congratulations to you and your team."

Inference: International Review of Science

Feedback & Comments

French authors

Aurélien Barrau

Astrophysicist specializing in general relativity and cosmology. He is a professor at the Université Grenoble-Alpes.

"Ca semble très intéressant, merci ! "

Jean-Paul Delahaye

Mathematician, professor emeritus in computer science at the University of Lille.

"Ce fut un plaisir de travailler avec vous et j'espère que nous aurons d'autres occasions de le faire."

Gilles Dryancour

Honorary Chairman of the Public Policy Group of CEMA, a European trade association.

"*Un grand merci pour l'information et la publication. C'est un plaisir d'être publié dans votre revue. "*

Jean-Pierre Dupuy

Professor Emeritus of Social and Political Philosophy at the École Polytechnique in Paris and Professor of Political Science at Stanford University.

" Merci beaucoup! Ce numéro se présente excellemment, et je suis fier d'être en aussi bonne compagnie. "

Djillali Hadjouis

Paleoanthropologist and associate researcher at the CNRS.

"Les traducteurs ont fait un excellent travail. Je vous remercie de votre envoi. Comme d'habitude, ce nouveau numéro livre d'intéressantes contributions. "

Inference: International Review of Science

Feedback & Comments

Henri Lepage

Economist well-known for Demain le capitalisme (Tomorrow, Capitalism) and Demain le libéralisme (Tomorrow, Liberalism).

"*En tous les cas, bravo pour cette initiative.* "

René Lozi

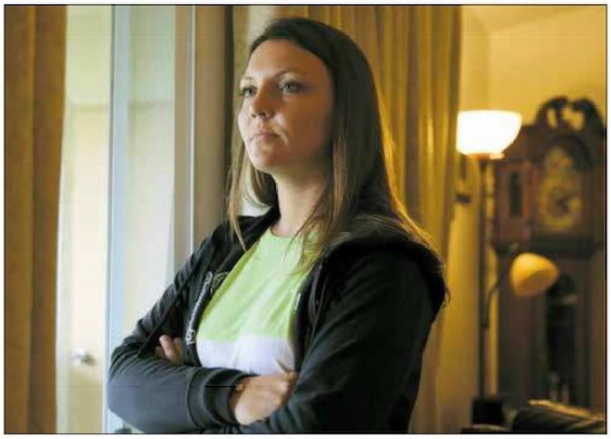
Mathematician in the Laboratoire Jean-Alexandre Dieudonné at the Université de Nice Sophia-Antipolis.

*"Je vous remercie très vivement, ainsi que par vous l'équipe éditoriale d'*Inference*, d'avoir accepté ma lettre. J'ai été très intéressé de découvrir votre revue. Je suis également très honoré d'être publié en compagnie de mathématiciens célèbres. "*

From Twitter

"Thoughtful, thorough, wide-ranging, and well written analyses. A rare find amidst a surfeit of shallowness."

"As a general and very ordinary reader, I just wanted to thank you for making available such damned interesting stuff." -- C. Van Wert



Courtney Wild, 30, was a victim of serial sexual offender Jeffrey Epstein beginning at the age of 14. Epstein paid Wild, and many other underage girls, to give him massages, often having them undress and perform sexual acts. Epstein also used the girls as recruiters, paying them to bring him other underage girls. Epstein, 65, a hedge fund manager, splits his time between the Virgin Islands and Palm Beach, Fla.

Photos by MIAMI HERALD

Jena-Lisa Jones, with her 18-month-old son, Raymond, says she was 14 when she was introduced to Jeffrey Epstein and was paid $200 by him to give him a massage at his home. Jones says Epstein told her to take off all of her clothes and that he fondled her during the massage.

Lawmakers issue call for investigation of Epstein deal

By JULIE K. BROWN,
ALEX DAUGHERTY
and CAITLIN OSTROFF
Miami Herald

MIAMI — More than two dozen lawmakers are demanding an investigation into possible misconduct by U.S. Secretary of Labor Alexander Acosta, who, as a former federal prosecutor in Miami, helped broker a secret plea deal for a multimillionaire accused of running an underage sex trafficking network.

The lawmakers, mostly Democrats, have sent several letters to Michael E. Horowitz, inspector general for the Department of Justice, calling for a probe into Acosta's role in the 2008 plea deal for Little St. James resident Jeffrey Epstein.

Epstein, 65, a hedge fund manager who splits his time between the Virgin Islands and Palm Beach, Fla., faced a possible life sentence for molesting dozens of girls, but was instead granted federal immunity as part of a non-prosecution agreement approved by Acosta when he was U.S. Attorney for the Southern District of Florida.

Thus far, 34 senators and members of the House have called for a probe of the Epstein case, including two Republicans, Sen. Marco Rubio and Sen. Ben Sasse, chairman of the Senate Judiciary Committee's subcommittee for oversight.

The requests come one week after the Miami Herald published an investigation, "Perversion of Justice," that revealed how federal prosecutors worked with Epstein's high-profile lawyers to craft a deal that would keep him out of prison. Instead he would serve a brief jail stint.

Acosta agreed, despite a federal law to the contrary, that the deal would be kept from Epstein's underage victims until after Epstein was sentenced, thereby making it impossible for them to appear in court and possibly derail the agreement.

The Herald identified nearly 80 possible victims, most of them 13 to 16 years old. Several of them, now in their late 20s and early 30s, told the Herald that they felt betrayed by Acosta and other prosecutors who failed to treat them as victims and labeled them as prostitutes — even though they were under the age of consent.

Acosta, 49, was confirmed as President Donald Trump's labor secretary in April 2017. During his hearings, Sens. Tim Kaine and Patty Murray questioned Acosta about Epstein's deal but Acosta never explained why he agreed to have it sealed.

He was approved by the Senate, 60-38, with eight Democrats and one independent voting in favor of his appointment.

"At the end of the day, based on the evidence, professionals within a prosecutor's office decided that a plea that guarantees someone goes to jail, that guarantees he register (as a sex offender) generally and guarantees other outcomes, is a good thing," Acosta said during his hearings.

As secretary of labor, Acosta oversees a massive federal agency that provides oversight of the country's labor laws, including human trafficking.

He had been on a list of possible successors to former Attorney General Jeff Sessions, but was said to have been eliminated from consideration after the Herald published its series online last week.

On Thursday, a group of senators, led by Murray, the ranking Democrat on the Senate panel that oversees the Department of Labor, wrote a letter to Horowitz, questioning whether Epstein used his connections to not only secure a lenient sentence, but to obtain immunity for other people who were involved or knew about his sexual exploitation of minors.

"Our justice system is predicated on the fundamental value that no individual is above the law, and to that end, it is essential that plea agreements involving well-connected individuals not only follow the law and standard practice, but also stand up to scrutiny," said the letter, signed by 15 other members of the Senate.

Rubio on Thursday also called upon the Justice Department to explain how such a deal could have happened.

"There should be a little bit more clarity as to why that case was resolved the way it was resolved," Rubio said. "Because for most people that read it, it doesn't make sense."

From 2001 to 2006, Epstein assembled a large cultlike network of underage girls — most of them from disadvantaged backgrounds — to give him massages. He then coerced them into sex acts and paid them to recruit other girls to bring to his Palm Beach mansion, three to four times a day, according to police.

The Herald's examination of thousands of court records, emails and FBI records also showed that after the deal was struck, it effectively shut down an ongoing FBI probe into whether Epstein was trafficking girls and young women from around the country and from overseas for sex parties attended by other powerful people at his mansions in New York, New Mexico and on his private island in the Caribbean.

Federal prosecutors had prepared a 53-page indictment against Epstein for federal sex crimes involving minors, which would have sent him to prison for decades. The indictment, however, was shelved, and Epstein was allowed to plead guilty to two minor prostitution charges in state court.

He spent just 13 months in the Palm Beach County jail, where he was given permission to leave most of the day under a liberal work release program that wasn't granted to other convicted sex offenders. He was released in 2009.

Sasse, in his letter, said he was disturbed that federal prosecutors would have given Epstein such a break.

"The fact that this monster received such a pathetically soft sentence is a travesty that should outrage us all," Sasse wrote in a letter to DOJ's inspector general.

Experts say its possible that several investigations could be launched, not just by the Department of Justice.

The Department of Labor's inspector general could also do a review, said Philip Lacovara, who served as counsel to the special prosecutor who investigated President Richard Nixon's Watergate scandal.

Neither agency is required to say if and when it is conducting a review, he said, so it's possible investigations could already be underway. But the results may or may not be made public.

"They may do 10 confidential investigations, but you may only know about one," Lacovara said.

Francey Hakes, a former federal prosecutor, said that such an investigation could result in policy changes and new regulations on how federal prosecutors handle victim notification and non-prosecution agreements.

"I just don't know of any retrospective way to fix things," Hakes said. "I hope they will get to the bottom of whatever happened."

The Miami Herald identified nearly 80 possible victims, most of them 13 to 16 years old. Several of them, now in their late 20s and early 30s, told the Herald that they felt betrayed by former federal prosecutor Alexander Acosta — who now works for the Trump administration — and other prosecutors who failed to treat them as victims and labeled them as prostitutes — even though they were under the age of consent.

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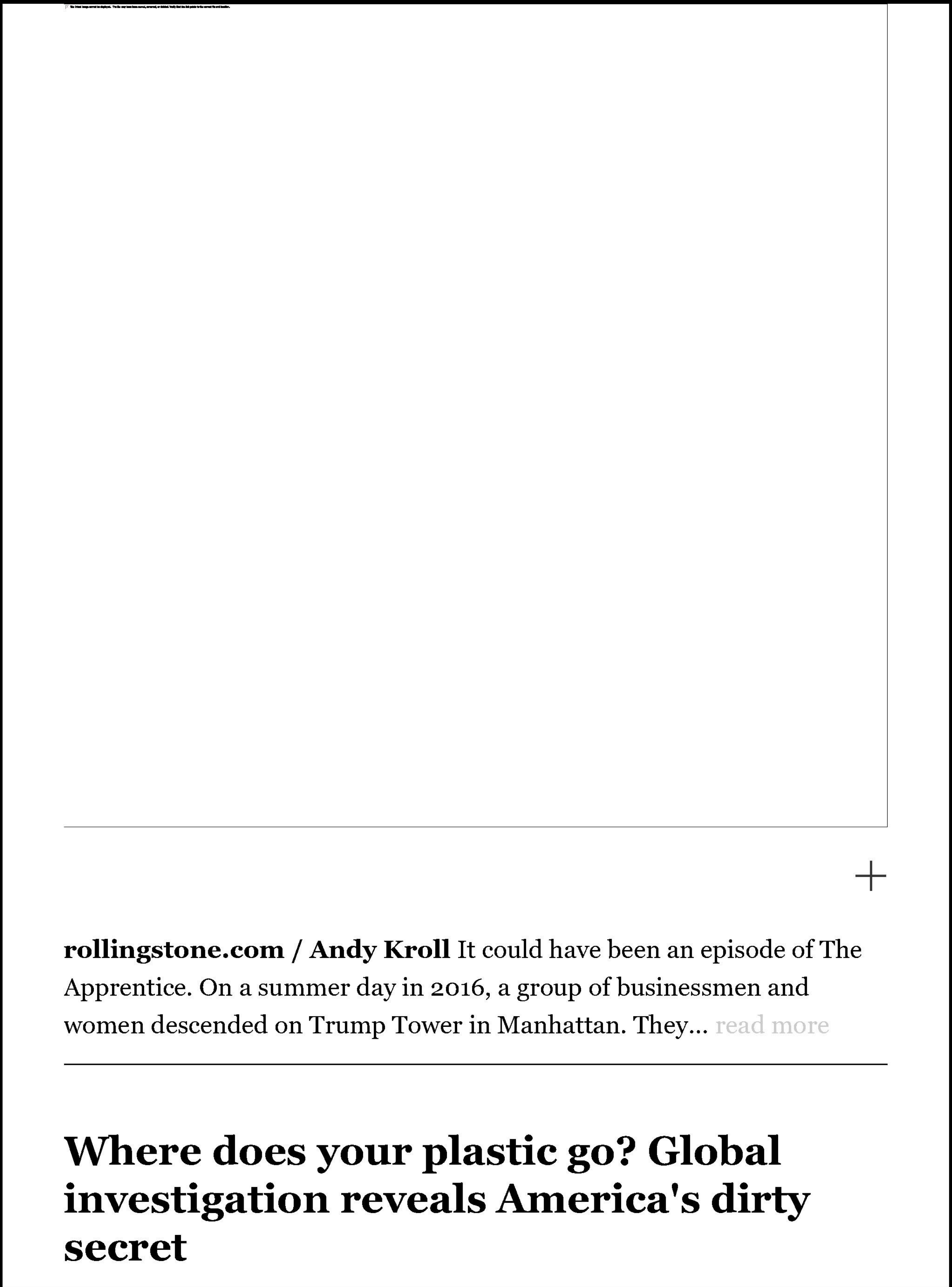

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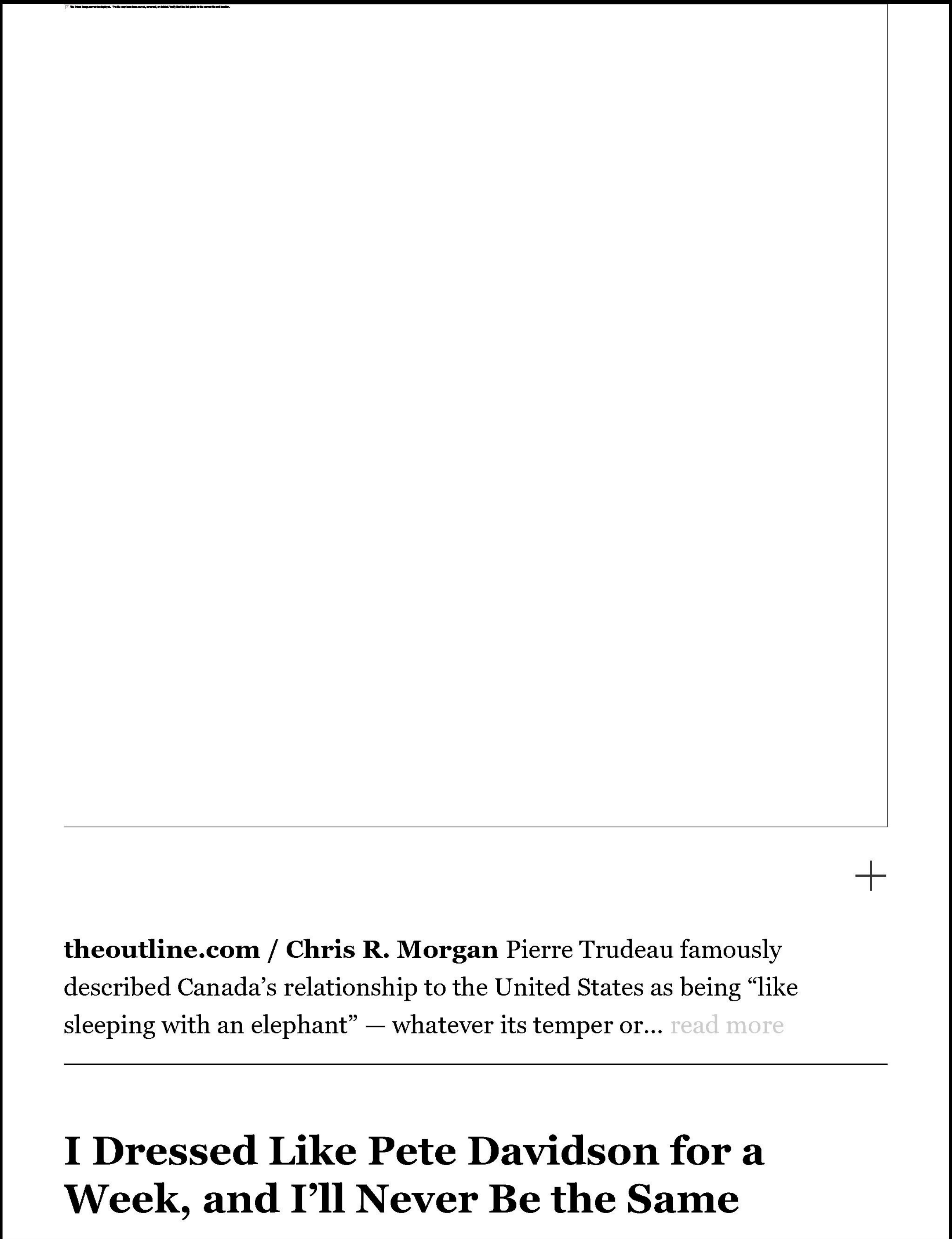

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